

CRIME PREVENTION AND SENTENCING: A PRACTICAL PENOLOGICAL PERSPECTIVE

by

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submitted in accordance with the requirements for
the degree of

Doctor of Literature and Philosophy

In the subject

Penology

at the

University of South Africa

Promoter: Prof N Du Preez

December 2012

CHAPTER 1

ORIENTATION AND RESEARCH METHODOLOGY

1.1 INTRODUCTION

The focus of this study is on crime prevention and sentencing from a penological perspective. By definition, penology is the study of punishment. It deals with the philosophy and practices of different societies in terms of how they control criminal activities and, in that manner, satisfy public opinion via an appropriate treatment regime for convicted offenders. One important factor that stands out is that penology is concerned with the effectiveness of those social processes devised and adopted for the prevention of crime, via the repression or inhibition of criminal intent or the fear of punishment. With that in mind, this chapter is aimed at providing a background to the research and motivation that led to the formulation of the problem statement and research questions. The aims of conducting this research will also be explained. The manner in which the research will be undertaken and all the designs and methods to be used will be outlined, in addition to the manner in which chapters will be presented. After outlining the key theoretical concepts to be covered in the research, the chapter will be concluded with a summary.

1.2 BACKGROUND AND MOTIVATION FOR THE RESEARCH

Crime has become an extraordinary problem of our age, and preventing it has become a priority for many states all over the world. South African crime rates remain one of the highest in the world. During the 2010/2011 financial year, approximately 2.1 million serious crimes were reported in South Africa. During the same period some 44 murders, 181 sexual offenses, 278 aggravated robberies and 678 burglaries were committed per day (Lebone, 2012: 707). In his 2009 Budget Speech, the Minister of Police, Nathi Mthethwa, mentioned that the fight against crime is part of an integrated approach in the effort to accomplish the goal of a better life for all; this means that an improved quality of life leads to improved conditions of safety and security of people in their homes, communities and places of work and entertainment. Not only is crime costly but it affects everyone, whether rich or poor, and no amount of money can compensate for its consequences. Solutions that are cost-effective and that work in preventing crime should be

found. Causes of crime are linked to its solutions; hence, solutions to crime must be based on the factors that cause crime. In order to prevent crime an analysis to determine the causes of certain types of crimes should be done. This requires that greater support is offered to those who have already been victims of crime.

After 1994, the criminal justice system of South Africa was confronted by a number of challenges such as accommodating the Constitution Act 108 of 1996, accommodating diverse cultures and practises in the administration of justice, the need to regain public confidence and getting to grips with exceptionally high levels of particularly violent crimes, amongst others (Sekhonyane, 2001). By definition, violent crimes are those crimes in which the offender uses or threatens to use violent force upon the victim. They include crimes such as murder, robbery and rape. The high rate of violent crimes can lead to the following:

- It has a negative impact on the investment climate and can deter or delay both domestic and foreign investments and ultimately economic growth;
- It erodes the development of human capital as well as social capital and, in turn, constrains the potential for growth;
- It diverts public resources away from public uses that have a potentially much higher impact on social development and growth in areas such as policing and justice.

Recently, in an attempt to deal with the problems within the criminal justice system, amongst others, the Minister in the Presidency responsible for planning issued a National Development Plan: Vision for 2030 (November 2011) in which he states that “public confidence in the criminal justice system is a necessary and important step in preventing crime and increasing levels of safety”. If the criminal justice system is regarded as inefficient and ineffective, then the likelihood of crimes being committed is increased. Cooperation between all the departments in the Justice Crime Prevention and Security Cluster can lead to a safer South Africa. The Minister further noted the 2007 outcome of the review of criminal justice which was led by Advocate Johnny De Lange; this review recommended that seven fundamental and far-reaching transformative changes to the criminal justice system should be implemented. They include:

- Adoption of a single vision and mission which leads to a single set of objectives, priorities and performance measurement targets for the criminal justice system by the Justice Crime Prevention and Security Cluster;
- Establishment of a new and realised single coordinating and management structure for the system, through legislation or by protocol, flowing seamlessly from cabinet to the courts;
- Making substantial changes to the present court process in criminal matters through practical, short – and medium – term proposals to improve the performance of the courts, especially regional courts;
- Putting into operation key priorities identified for the component parts of the system, which are part of (or affect) the new court process especially as it pertains to improving capacity;
- Establishing an integrated and seamless national criminal justice system, and information technology database which contains all information relevant to criminal justice;
- Modernising all aspects of systems and equipment in an integrated and holistic way which includes fast-tracking the implementation of current projects and modernisation initiatives;
- The public should be involved in the fight against crime by introducing changes to community policing and expanding its role so as to deal with all matters in the system - such as policing and parole boards (National Development Plan, 2011).

1.3 PROBLEM STATEMENT

Each of the components that form part of the criminal justice system have their own problems. The following are just a few of the many problems that the police are facing. These include the lack of a structured plan or actions at the national level, to empower stations to manage and actually reduce crime; the shortage of detectives; detectives investigating high volumes of trivial and/or minor offences; many commissioned officers (Superintendents and Captains) who are not in command posts do not carry any dockets; many inexperienced detectives investigate more dockets; insufficient resources; lack of proper crime information and intelligence during the assessment of crime combating at police stations; and the lack of discipline at the station level. The performance of the South African Police also affects other components of the criminal justice system. For the justice department to prosecute the offender, the police must first

investigate the case and until such time as the detectives have finalised the case, there is little the justice department can do.

After decades of ill-treatment of offenders, the correctional policy in South Africa has alternatively emphasised the rehabilitation of offenders. Hence, the department states in its mission statement that it places offender rehabilitation as the core of all its activities in partnership with external stakeholders, through:

- “The integrated application of the departmental resources to focus on the correction of offending behavior, the promotion of societal responsibility and the overall development of the person under correction;
- The cost-effective provision of correctional facilities that will promote efficient security, correction, care and development services within an enabling human rights environment;
- Progressive and ethical management and staff practices within which every correctional official performs an effective correcting and encouraging role” (Department of Correctional Services, 2005: 10).

However, the correctional services also have their own problems. In the 2009 Budget Speech, the then Deputy Minister of Correctional Services, Hlengiwe Mkhize, listed the challenges facing the department as overcrowding; the ill-preparedness of officials to be caretakers of rehabilitation programmes; the high levels of illiteracy amongst offenders as well as the diminishing spirit of Ubuntu (Mkhize, 2009). With many sentencing options most judicial officers still prefer imprisonment over a fine, probation and suspended sentence, amongst others. Increases in the overuse of imprisonment have led to severe overcrowding. Technically, overcrowding results from the criminal justice system sentencing offenders to imprisonment for longer periods than the correctional system has the capacity that allows it to do so, reduction in the use of parole, an increase in the use of imprisonment of vulnerable groups such as children and women as well as old people. Mays and Winfree (2005: 409) compared institutional overcrowding with medicine, where practitioners talk about two kinds of conditions i.e. acute (severe, immediate and potentially life threatening) and chronic (long-term or persistent) and concluded that institutional overcrowding has moved from being an acute problem to being a chronic problem. Overcrowding leads to many problems that face the current correctional

system; these include the pressure to build more facilities; compromised security for both inmates and staff; the ability to follow through with the classification plans; sacrificing rehabilitation for safe and secure institution; strain in the infrastructure of the institution and services that are provided to inmates; as well as hostility, anger and violence between inmates and other inmates and correctional officers.

Historically, the correctional system's normal roles were considered feeding, housing and controlling the activities of the unwelcome citizens of the society (Swaton & Morgan, 1980:281). However, the system currently has more roles to play. In addition to its rehabilitative role, the correctional system has the basic custodial role as well as a reintegrative role to fulfil. Adding more roles to corrections is critical to its ability to be able to perform its other roles. For example, if a person committed an offence because of his/her lack of ability to maintain gainful employment, part of that person's rehabilitation would be to prepare him or her to do so after release. However, even though such a role can be performed perfectly, there is no assurance of success. If the society does not welcome the person and does not recognise the benefits of the training, then such training would be useless.

Many authors have come up with mixed opinions regarding the use of the correctional system, with some expressing that they are comparatively expensive institutions not only to build but also to maintain. Others are of the opinion that they only get a marginal share of public revenue, are underfinanced, wasteful and unnecessary. Mays and Winfree (2005: 407) stated that the most difficult challenge facing the correctional system is that of controlling the costs without changing the essential character of the system, losing important programming or neglecting inmates' general and individual needs. As the number of offenders increases, the costs of imprisonment also increase. In 1997, the Department of Correctional Services had a departmental budget of R3.5billion. For the year 2012/13, the departmental budget currently stands at R17.8billion. It is also estimated that the departmental budget will be R19.9billion in the 2014/15 financial year (Department of Correctional Services, 2012: 7).

Although it is the purpose of the criminal justice system to prevent, combat and reduce crime in the country, there are problems that can prevent the development and implementation of new and

better criminal justice policies such as resources, fairness versus public punitiveness, capacity and time (Schonteich, 2002: 1).

- “Resources: Budget constraints and limited resources, given the country’s many pressing socio-economic needs. That is, policy makers face an opportunity cost for every policy they adopt. Greater expenditure on one aspect of the criminal justice system invariably requires a reduction in expenditure or a lost opportunity somewhere else.
- Fairness versus public punitiveness: The criminal justice system has to be transformed from an authoritarian system to one that operates within the rule of law, and is open, accountable and responsive to the needs of all South Africans. As a result, two key objectives of the criminal justice system often appear to contradict each other. On the one hand, the criminal justice system seeks to uphold the law and protect the rights entrenched in the country’s constitution. On the other hand, the system seeks to protect the public from criminals and increase public feelings of safety. To feel safer, the public favour the swift punishment of offenders. The criminal justice system, however, devotes much of its resources to processing suspects in a legally and procedurally correct manner—something which is time consuming and allows for some offenders to get away with the crimes they commit.
- Capacity: South Africa has extremely high levels of violent crime. Much of the criminal justice system is operating at full capacity, and crisis management is the norm for many departments. The criminal justice system lacks the capacity to devote sufficient time and resources to monitor its performance, and develop innovative solutions for identified problems. As a result, policy makers and senior officials struggle to develop innovative interventions and prioritise these to improve the performance of the criminal justice system in a fast, affordable and constitutionally as well as politically acceptable manner.
- Time: Policy makers need to undertake interventions that produce positive results within a short period of time. High crime levels, and popular perceptions that the criminal justice system is not performing adequately, result in significant economic costs, vigilantism, and a dysfunctional society where a significant proportion of young people grow up surrounded by crime and violence. Without economic growth, people’s trust in the ability of the state to protect them, and a functional society, it will eventually become impossible to reduce crime

to acceptable levels. The time that is available to policy makers to improve the performance of the criminal justice system is, therefore, limited.”

Allen and Simonsen (1986: 96) concluded that the criminal justice system comprises of three separate systems and what is done in one has a direct effect on another. For example, courts receive raw materials from the police, the corrections receive from the court and the cycle will continue until the released offender is arrested again. If the police keeps on making arrests it means an increased workload for the courts and corrections. On the other hand, if corrections fail in its reintegration efforts, the police are overloaded with repeat offenders.

Crime threatens the safety of our communities. Of particular concern is the fact that most crimes in South Africa are violent and, regardless of the socio-economic status of a particular neighbourhood, crimes permeate throughout the entire country. The cost of the criminal justice system in South Africa is astronomical, therefore, the incredible cost of crimes, both economically and socially, suggests the need for a more pro-active rather than re-active stance towards crime fighting. This would, in turn, significantly reduce crime levels and current criminal justice expenditure by preventing crime from even occurring. De Villiers and Nel (2010) state that the South African crime rate rose to unacceptably high levels between 1980 and 2006 and, as a result, a vast majority of funds were devoted to the upkeep of the criminal justice system i.e. correctional services, justice and the police. The expenditure for the criminal justice system increased from R409m in 1980 to R9.5b in the 1994/5 financial year to R45.2b in the 2006/7 financial year.

The task of sentencing is often more complex and difficult. One of the central goals of any sentencing system is to avoid unjustified disparities and ensure consistence (McKenzie, 2005: 44). This is mainly because judges are individuals and if, for example, five different judges are given five similar cases, though they might not be very far apart, they can come to different conclusions. Judges may exercise their discretion differently. However, disparity exists when similar offenders were sentenced differently or when different offenders receive the same sentence. Spohn (2002: 133) identified three situations where sentencing disparity exists. Firstly, disparity exists when judges impose different sentences on two offenders with identical criminal

histories who are convicted of the same crime. Secondly, when judges impose identical sentences on two offenders whose prior records and crimes are very different and thirdly when sentence depends on the judge who imposes it or the jurisdiction in which it is imposed.

Programmes to deal with crime cannot be developed and operated in any line of endeavor without sound and relevant facts. If the criminal justice system wants to be able to fulfill the responsibility of reducing crime, it must first understand the possible effects of any one of its treatment techniques. In addition, the calculation of the cost of crime to victims reflects the number of crimes taking place but this is only part of the cost. There are large establishments in both the public and the private sectors dedicated to the prevention and punishment of the acts themselves and the preventative and penal measures adopted by these institutions should also be included in calculating the cost of crime. It is for these reasons that the researcher aims to establish how sentencing objectives can be used to prevent crimes. The objectives of sentencing which formed the foundation for this research are retribution, incapacitation, deterrence and rehabilitation. It will be determined, in this study, if the goal for sentencing is rehabilitation, for example: how much does it contribute to the prevention of crime? The aim will be to determine the extent to which the sentence imposed, for example, with rehabilitation in mind contributes in preventing future criminal activities. It is expected that the findings can be used effectively in the day-to-day operations of the criminal justice system.

1.4 AIMS OF THE RESEARCH

The guidelines for a sensible analysis strategy in the present study were derived from clearly formulated aims and objectives. Therefore, as derived from the introductory remarks on the questionnaire, the objective of this study was to establish respondents' views on crime prevention and sentencing, evaluated from a penological perspective. As such, the research aimed to establish respondents' views on the sentencing process (Section B); the continuous use of imprisonment as punishment (Section C) and the objectives of sentencing, continued imprisonment and crime prevention (Section D). The research was aimed at answering the following questions:

- What is the relationship between the rates of crime and sentencing?

- What is the relationship between the seriousness of the offence and sentencing?
- Does public opinion have any impact on sentencing decisions?
- What is the relationship between imprisonment and crime prevention?
- Does rehabilitation as an objective of sentencing contribute to crime prevention?
- Does deterrence as an objective of sentencing contribute to crime prevention?
- Does retribution as an objective of sentencing contribute to crime prevention?

Not only did the research seek to empirically determine the objectives of sentencing but it also sought to determine the extent to which other forms of punishment are being used by the courts. Furthermore, the objectives of the study determine how and which type of measuring instrument (in this instance, a questionnaire) was developed to measure respondent perceptions; the population regarded as the target population; sampling; ethical considerations and ethical clearance; as well as the sampling technique and the analysis strategy to interpret respondent responses and answer the research questions – all of which stem from the research objectives.

1.5 HYPOTHESES

According to Van Dalen (1979: 198), a hypothesis specifies the facts and the relations amongst them that offer a logical description or explanation of the conditions or events that gave rise to the problem. The main function of the hypothesis is to state a specific relationship between a set of phenomena in such a manner that their relationship can be empirically evaluated. Four factors that should be considered when converting an idea into a research hypothesis were adhered to:

- The hypothesis must be testable,
- There should be a solid rationale for the hypothesis,
- A research hypothesis should be relevant,
- The testing of the research hypothesis should be practical and ethical (Mitchell and Jolley, 1996: 59)

After formulating a hypothesis, the researcher must then deduce its consequences. The researcher must select or develop tests that will determine through empirical investigations whether those consequences actually occur. Then, finally, the researcher must carry out the tests thereby collecting facts that will either support or not support the hypothesis. To address the research

questions in more detail, a number of areas related to crime prevention and sentencing were identified. The research hypotheses and analysis strategy were then formulated and conducted according to these issues of crime prevention and sentencing. The following hypotheses and sub-hypotheses were then formulated from the listed research questions:

H₀₁₁: There is a relationship between the escalation rate of crimes and lenient sentencing

H₁₁₁: There is no relationship between the escalation rate of crimes and lenient sentencing

H₀₁₂: There is a relationship between the seriousness of the offence and sentencing

H₁₁₂: There is no relationship between the seriousness of the offence and sentencing

H₀₁₃: When sentencing, judges and magistrates consider public opinion

H₁₁₃: When sentencing, judges and magistrates do not consider public opinion

H₀₁₄: There is a relationship between imprisonment and crime prevention

H₁₁₄: There is no relationship between imprisonment and crime prevention

H₀₁₅: Rehabilitation as an objective of sentencing has a relationship with crime prevention

H₁₁₅: Rehabilitation as an objective of sentencing has no relationship with crime prevention

H₀₁₆: Deterrence as an objective of sentencing has a relationship with crime prevention

H₁₁₆: Deterrence as an objective of sentencing has no relationship with crime prevention

H₀₁₇: Retribution as an objective of sentencing has a relationship with crime prevention

H₁₁₇: Retribution as an objective of sentencing has no relationship with crime prevention

1.6 THE RESEARCH PROCESS

1.6.1 Research design

Criminal justice research serves many purposes which include explaining, exploring, describing and applying (Maxfield and Babbie, 2008: 18). Any given study can have more than one of these

purposes. In this study, a combination of exploration and description was used. The exploratory method is used to investigate little understood phenomena and to identify important variables. Exploratory research is research that is intended to develop initial insights into the phenomenon, thus providing direction for further research needed into the phenomenon - if they arise. The focus on exploratory research is on developing a preliminary understanding about a new or unusual problem. Descriptive studies, however, are often conducted in the criminal justice system in order to gain the ability to test hypotheses about virtually any variable in virtually any situation (Mitchell & Jolley, 1996: 393). Descriptive methods give the flexibility to test whether two or more variables are related. According to Van Dalen (1979: 285), descriptive data is usually collected by means of administering questionnaires, interviewing subjects, observing events or analyzing documentary sources with the aim of testing hypotheses, propositions, measuring attitudes or describing patterns of behaviors and quantities. Gorman and Clayton (2005: 12) provided reasons for mixing methods in research. Firstly, when two or more methods are employed the researcher is able to address different aspects of the same research question thereby extending the breadth of the project. Secondly, by employing methods from different research paradigms, the researcher is able to compensate for inherent weaknesses in each approach.

1.6.2 Sampling

In order to save time and money when conducting research, one should use a sample (Babbie, 1990: 65). A sample is a smaller representation of a larger whole. According to Sapsford and Jupp (1996: 26), the first step in sampling is to define the population of interest clearly and accurately. The population is that group within which the researcher is interested in gaining information and drawing conclusions. Specifying the group that is to constitute the population in the study is an early step in the sampling process that affects the nature of the conclusions that may be drawn from the study (Tuckman, 1994: 238).

Purposive sampling was used to select the population of this study. As Maxfield and Babbie (2008: 235) state: “occasionally, it may be appropriate to select a sample on the basis of our knowledge of the population, its elements and the nature of the research aims”. Rubin and Rubin

(1995: 66) suggest three guidelines for selecting informants when designing a purposive sampling strategy, i.e. informants should be knowledgeable about the cultural arena or situation or experience being studied; informants should be willing to talk; and informants should be representative of the range of point of view.

Over the years, statistics have shown that despite having fewer policemen, Limpopo has less crime than the rest of South Africa's other eight provinces. The researcher resides in Limpopo, in the Thohoyandou area; hence the sample was limited to the jurisdiction of the Thohoyandou High Court, Thohoyandou Regional Office and the Sibasa Regional Court. At the time of the research, Thohoyandou High Court had three Judges, one permanent and two acting. The Sibasa Regional Court had three regional magistrates. The Thohoyandou regional office - with a total of 25 magistrates in its eight sub-offices - is the biggest in the Limpopo cluster. The eight sub-offices are Thohoyandou, Dzanani, Makhado, Tshilwavhusiku, Messina, Mutale, Tiyani and Hlanganani. All the listed judges and magistrates participated in the study to make it 100% valid and reliable. Questionnaire administration was carried out in August 2011.

1.6.3 Data collection

The value of any research depends on how data is collected. According to Maxfield and Babbie (2008), there are three basic ways of collecting data for criminal justice research, i.e. asking questions, making observations and examining written records. The study involved asking questions in the form of a questionnaire and examining written records in the form of a literature review.

Questionnaire: Without a well-designed questionnaire tailored to the study's purposes, most researchers have little hope of achieving their research goals (Banchman & Schutt, 2007: 209). When designing a questionnaire four initial tasks should be undertaken, i.e. clarify the reason for the study; determine the information required from the respondents; list the research questions that should be answered; and identify any additional information required to address the research questions (Kanjee, 2006: 485). There are so many advantages that come with using the questionnaire: it can be distributed to a large number of people, it allows for anonymity, it is cheap and it is an easy way to get data.

A questionnaire was deemed a suitable perception measuring instrument to collect data on the judges' perceptions of crime prevention and sentencing. The questionnaire used in this study was a structured instrument. The questionnaire consisted of a first section concerned with the biographical information of the respondents (namely, gender, race, years experience, etc.) and eleven sections with subsets of closed-ended questions, each relating to an area of crime prevention or sentencing identified in literature as a critical element of the penological system on sentencing, imprisonment and crime prevention. The questionnaire is included as an appendix and the individual statements probed in the questionnaire can be referenced in the composite frequency tables included in Chapter 6; these tables reflect the respondents' perceptions regarding the individual questions.

Literature review: A literature review helped the researcher to obtain information that has already been covered on the topic and use it as a guideline. Kaniki (2006: 19) lists the following as specific purposes for conducting a literature review:

- It helps in identifying gaps in developing a research problem
- It helps in identifying issues and variables related to the research topic
- It helps in identifying conceptual and operational definitions
- It helps in identifying methodologies

Chapters 2, 3, 4 and 5 consist of a literature review. Chapter 2 consists of a literature review on the concepts of crime, crime prevention, punishment and sentencing. Chapter 3 consists of a literature review on the role of rehabilitation as a crime prevention tool. Chapters 4 and 5 consist of the literature review on the roles of deterrence and retribution as crime prevention tools. While conducting the literature review it was ensured that the following criteria, as set out by Tuckman (1994: 61), are met:

- Adequacy: whether the literature review is done to a sufficient degree
- Clarity: whether the important points were clearly made
- Empiricalness: whether the literature covers actual findings rather than just opinions
- Relevance: whether the citations bear on the variables and hypotheses
- Organization: whether the review is a presentation of literature well-organised in terms of introduction, sub-headings and summaries

- Convincingness: whether the literature review helps in making a case for the study

1.6.4 Ethical issues

In order to ensure that the study remains ethical, the four main ethical issues discussed by Banchman and Schutt (2007: 287) were adhered to:

- Voluntary participation: It was made known to the participants that participating in the study was voluntary
- Subject well-being: It was ensured that there was no harm to the reputations or feelings of the participants
- Identity disclosure: It was ensured that participants do not disclose their personal information
- Confidentiality: Participants were informed that their participation in the study will remain confidential and that the answers provided on the questionnaires will only be used for research purposes

1.7 ORGANISATION OF THE STUDY

The research report was broken down into the following seven chapters which were systematically organized to deal with specific areas in a quest to solve the research questions:

Chapter 1 provides the basis of the study and the reasons for conducting it. The methods and the population involved in undertaking the study have also been outlined here.

Chapter 2 covers the theoretical framework of the concepts of crime, crime prevention, punishment and sentencing. The chapter begins with an attempt to ensure an understanding of crime and its impact in the criminal justice system. The evolution of crime prevention and current trends in crime prevention are discussed in the chapter. The focus is also on the various crime prevention strategies used. After reading the chapter, the reader will have an understanding of the concept of punishment, including its meaning, its uses and its justifications amongst others. In addition, the reader will also gain insight into the concept of sentencing. Various methods and types of sentences are also discussed in this chapter.

Chapter 3 presents an overview of the process of rehabilitation and how it contributes to crime prevention. The first part of the chapter includes a complete discussion of the offender rehabilitation framework and its relationship with the criminal justice system. In order to understand the situation in which rehabilitation is applied, various types of offenders such as career criminals, sex offenders and substance abusers have been discussed. The requirements for a successful rehabilitation programme have also been set out in this chapter. The reader will also understand that provisioning of the various rehabilitation programmes by the correctional system is not a privilege but rather a right which is owed to the offender. A discussion of the various rehabilitation programmes for the offenders is also provided in this chapter.

Chapter 4 deals with the theory of deterrence and how it contributes to crime prevention. Deterrence also has an impact on the criminal justice system because, as discussed in this chapter, it focuses on circumstances in which the threat of punishment prevents crime. The two types of deterrence, i.e. special deterrence and general deterrence are also discussed. In addition to the prerequisite of deterrence, factors that hamper the application of deterrence are also outlined in this chapter. The extent of the cost of deterrence is also a topic discussed in this chapter.

Chapter 5 covers issues of retribution, its conception, its relationship with the criminal justice system, its historical background, its different types, its advantages and disadvantages, its misconceptions and its varieties, amongst other related matters.

Chapter 6 outlines the empirical findings from the questionnaires given to the judges and magistrates for completion. It provides the views of the respondents with regards to the sentencing process, continuous use of imprisonment and objectives of sentencing. The respondents' views on rehabilitation, deterrence and retribution as effective crime prevention tools are also outlined in this chapter.

Chapter 7 comprises a summary of the research project and offers a conclusion. Finally, it is hoped that the recommendations made in this chapter will have a positive impact on the day-to-day administration of the criminal justice system in South Africa.

1.8 KEY THEORETICAL CONCEPTS

1.8.1 Punishment

Crime upsets moral and social order and punishment is required to restore balance. Where an offence has been committed, the offender deserves punishment. Punishment is the sanction of the criminal law and it involves (a) the intentional infliction of suffering upon an offender, and (b) an expression of the community's condemnation and disapproval of the offender and his or her conduct (Rabie & Strauss, 1981: 7). Lacey (1988: 7) defined punishment as the state's imposition of unpleasant consequences on an offender for his or her offence. The idea of punishment is not only meant to serve as prevention of violence, but also to make the offender realize that what they have done is wrong. Punishment deters the offender and others from committing the same offence again.

1.8.2 Sentencing

Sentencing is the most important area of the law. Champion (2008: 2) defined sentencing as the imposition of punishment on an offender after he or she has been convicted of a criminal offence. In sentencing people who have been found guilty of offending against the criminal law have sanctions imposed upon them in accordance with that law.

1.8.3 Crime prevention

Whisenand (1977:4) noted that, in its widest sense, 'crime prevention is the reduction or elimination of the desire and opportunity to commit a crime'. Crime prevention is defined as an offensive strategy to combat crime. Crime prevention refers to the reduction of future risks of crime. It is generally accomplished through law enforcement and corrections, reduction of opportunities to commit crime, and social development actions. Law enforcement and correctional actions try to limit the opportunity and interests of persons to commit crimes. This is done through the constructive education and punishment of offenders as well as the deterrence of potential offenders. Wright & Miller (2005: 15) concluded that, in general, the term 'crime prevention includes any efforts that either stop a crime from ever occurring or reduces the likelihood that further crimes will occur in future.'

1.8.4 Rehabilitation

Rehabilitation entails an attempt to reduce the offending effect on the behaviour of the offender. According to Sechrest, White and Brown (1979: 6), any planned intervention that is aimed at reducing further criminal activity by an offender constitutes rehabilitation. It is based on the belief that people can change and that they are never beyond reform.

1.8.5 Deterrence

Within the deterrence theory, punishment is aimed at discouraging future wrongdoings whether by the offender or by others tempted to follow his or her example (Marshall, 2001: 104). A person is deterred from doing certain things because he or she knows the severe consequences that he or she might suffer from such actions.

1.8.6 Retribution

The term retribution simply means repayment – that is, giving back to someone what he or she deserves either in terms of punishment or rewards. Within retribution the offender gets what he or she deserves. People are punished for the crimes that they have committed and the punishment that they get is somehow believed to be fit for their crimes. It is believed that the punishment that offenders get will prevent other people from committing the same crime because they realise the kind of punishment that they too might encounter.

1.9 LIMITATIONS OF THE STUDY

The limitations of the study are those characteristics that impact upon or influence the application or the interpretation of the results. They are the constraints on the generalizability and utility of findings that are the results of the devices of design or method that establish internal and external validity. There are many possible limitations that any research project may face. Although this research project has reached its aims, there were some unavoidable limitations. As indicated, statistics have shown that despite having fewer policemen, Limpopo has less crime than the rest of South Africa's eight provinces and the researcher was interested in the sentencing process in the province; however, visiting all the judges and magistrates would have been more expensive, hence the population was only limited to the Thohoyandou area.

Another problem encountered was the availability of sentencing statistics. The provincial office only keeps statistics based on the performance of the courts. Only magistrates themselves can provide their own sentencing statistics. Obtaining accurate statistics from each participant, given the time limit and their commitments, seemed impossible.

However, such problems did not relieve the researcher from designing a study that can adequately test hypotheses and measure results. The number of participants who contributed to this research maybe not high enough to achieve correct conclusions but all the selected participants participated. The section on sampling accurately describes the sampling of the research population. In addition, shortcomings were addressed by obtaining participants who are more experienced in the field.

1.10 SUMMARY

Crime, as it will be discussed in Chapter 2, instils fear in everyone. Not only does the fear of crime affect the individual's quality of life but it also affects the community in which he or she lives. Fear of crime has become a familiar part of every South African's life. Socially, such fear of crime can lead to a breakdown of social cohesion and solidarity; curtailment of normal social activities; avoidance of sites and situations associated with crime; disappearance of sociability, mutual trust to support or assist other people and the avoidance of strangers. Furthermore, the fear of crime psychologically leads to feelings of anxiety, general mistrust, alienation, as well as dissatisfaction with life and, in some cases, causes mental illness. The research tackles the most important issue of crime prevention and how it can be brought about through sentencing. As the saying goes, prevention is better than cure. Crime is a problem that affects everyone in the society irrespective of gender, race, color, language, religion, political affiliation and nationality, amongst others. If prevented before it occurs, South Africa and the rest of the world can be a better place. The reader will therefore obtain a clear indication as to how the objectives of sentencing contribute towards crime prevention.

CHAPTER 2

THE CONCEPT OF CRIME, CRIME PREVENTION, PUNISHMENT AND SENTENCING

2.1 INTRODUCTION

This chapter covers the theoretical framework of the concepts of crime, crime prevention, punishment and sentencing. The chapter begins with an attempt to ensure an understanding of crime and its impact in the criminal justice system. A discussion on how crime prevention has evolved throughout the years and current trends in crime prevention is provided herein. The focus of this chapter is also on various crime prevention strategies that are used. After reading the chapter, the reader will have an understanding of the concept of punishment, its meaning, its uses and its justifications, amongst other relevant matters. In addition, the reader will also obtain insight into the concept of sentencing, as well as the various methods and types of sentences.

2.2 EXPLAINING CRIME

There seems to be significant differences on what crime is in many of the judicial systems of the world, however, this is primarily due to the way in which different governments have chosen to define crime. In addition, the definition of crime varies from one author to another. Siegel (2005: 17) defined crime as a violation of societal rules of behaviours as interpreted and expressed by a criminal legal code created by people holding social and political powers. Violations of such rules are subject to sanctions by state authority. Alternatively, Adler *et al.* (1994: 8) defined crime as any conduct by human beings which violates a criminal law and therefore leads to punishment. However, Tappan (1947: 100) defined crime as “an intentional act in violation of the criminal law committed without defense or excuse, and penalized by the state”. Thus, according to Tapan, a crime is an act in violation of a criminal law for which a punishment is prescribed, the person committing it must have intended to do so and must have done so without legally acceptable defense or justification. Walklate (2005: 5) acknowledged different ways in which crime has been defined by criminologists and concluded that they each, in their different ways, take the law as a starting point for their understanding of the criminal but only the legal understanding takes the criminal code as the definitive start. Nevertheless, Findlay et al. (1999:

vii) concluded that crime is a complex concept and cannot be understood outside of its social context. Its definitions should be considered in legal terms. The definition of crime must be precise, unambiguous, usable and should consist of the following elements: an act or omission; the intent requirement; violation of the elements of a criminal law; and, occurring without justification or defense.

- **An act or omission**

Because a person cannot be punished for his or her thoughts, action must be taken. However, in some cases words may be considered acts, as in treason, or in assisting another person to commit crime. In such cases, it is argued that some actions can be taken but under many legal systems no individual can be punished for thinking about committing crime if no elements are put in action towards the commission of that crime. For example, to consider murdering a spouse and do nothing about it is not a crime but hiring someone to murder a spouse is a crime (Pursely, 1994: 42).

- **The intent requirement**

Because an act or the omission of an act alone is not sufficient to constitute a crime, the law requires intent or *mens rea* in order to establish the capability. Not only does intent play a critical role in determining whether the act committed was a crime or not, it also determines the degree of the crime committed, for example, whether a killing was a first or second degree murder. Pursely (1994: 42) stated that when proving intent as an essential element of a crime one enters into the gray area of criminal law where proving intent is more complicated because it demands an evaluation of the motive of the offender.

There are two types of intent, i.e. specific intent and general intent. Specific intent forms the basis for most crimes as it indicates whether the individual planned to carry out an offense before actually committing the act. Except for those crimes that only require a showing of general intent, specific intent is an important element of all crimes. For example, the specific intent in a rape case will be to have carnal knowledge of a female who is not one's wife, against her will and in the case of theft, the specific intent will be to take something of value from its rightful

owner with the purpose of keeping it permanently from the owner. If one did not act with this intent or purpose then one cannot be convicted of the crime.

In contrast, general intent crime only requires that one intended to perform the act. Unlike specific intent that requires intentional unlawful action, general intent does not require an intentional unlawful action but only that a wrongful act was committed: “General intent is considered to be present in the criminal’s decision to commit an offense or deviate from standard conduct when that offense or deviation may expose members of the society at large to harm even without specific intent as to the object or consequences of such conduct” (Pursely, 1994: 43).

Behavior that does not conform to legal conduct is assumed to intend harmful consequences, whether a person actually intends harmful consequences or not. For example, in a drunken driving case, if an intoxicated driver strikes and kills a pedestrian or a motorist, though the driver did not intend to do that, the principle of general intent requires that such person be charged. According to the principle of general intent, it is legally assumed that the driver voluntarily became intoxicated and operated the vehicle which exposed others to harm. In addition, there was foreseeable knowledge based on experience that the voluntary state of intoxication and the subsequent driving of a vehicle in such state could conceivably result in injury or death. For these reasons the state does not have to prove the individual’s actual intent to kill or harm because general criminal intent exists. General intent crimes are easier to prove because it is not necessary to show that the offenders had some particular purpose. The distinction between specific and general intent plays a significant role in terms of defense. If charged with specific intent the state must prove that there exists a purpose; failure by the state to do so will not lead to a conviction.

- **Violation of elements of criminal law**

In terms of criminal law, the question as to whether the type of behavior for which a person is charged is acknowledged by the law as a crime is addressed. No person can be charged if his or her act does not violate the criminal law. Snyman (1989: 530) summarized the principle of ‘no crime without legal provision’ as follows:

- A person can only be found guilty by the court if the action he or she is charged with is acknowledged by the law as a crime
- A person can only be found guilty of a crime if the action involved is acknowledged as a crime during the commission of the act
- There should be a clear definition of crimes
- The definition of crimes should be formulated in the narrow sense
- Everyone should have access to the law so that they can be aware of what type of behavior is regarded as criminal. In this manner everyone will avoid being in conflict with such law.
- **Without justification or defense**

According to Naser (1993: 17), even though it can be evident that a person's action is recognized by the law as a crime and is a perceptible, human and voluntary action which is also illegal, that does not mean that the accused can be held criminally liable. An act cannot be considered a crime if the individual has a legally recognized justification or defense of the act. For example, a person faced with the possibility of being killed might use self-defense. An individual charged with such a crime will offer evidence to defeat the criminal charge. It is allowed to use force to protect other persons or yourself when threatened by severe bodily harm or death.

2.3 THE FEAR OF CRIME

The increase in the crime rates and the growing public concern has made crime a major social problem (Evans, 2011: 10). Because people were most likely to be victimized, the shared experience of crime and its effects lead to an increasing fear of crime. While defining the fear of crime, Ferraro (1995: 8) stated that fear is “an emotional response of dread or anxiety to crime or symbols that persons associates with crime. This definition of fear implies that some recognition of potential danger, what we may call perceived risk, is necessary to evoke fear”. Although Ferraro's definition requires an emotional response, fear may manifest itself in various ways depending on the person involved and the basis for his or her anxiety. While some individuals fear physical attacks in their places of residence, some fear walking on the streets in their

neighborhood. As a result, there may be a shift in physiological functioning such as high blood pressure or rapid heartbeat (Lab, 2004: 9). Alternatively, the person may similarly alter his or her attitudes about walking alone in certain places or avoiding various activities. The individual's source of fear will be determined by his or her response to fear.

In areas where crime rates are high, residents also feel less attached to the community, more isolated and more fearful (Livingston, 1996: 27). However, if there is higher integration of the community, the fear of crime and disorder may be reduced. Because it provokes preventative activities, there is a relationship between fear and crime prevention. Fear causes people to take precautions, to lock doors, fit alarms and avoid certain situations. However, according to Crawford (2007: 899), initiatives aimed at crime prevention do not necessarily reduce fear and initiatives that fail to reduce crime may successfully impact upon reported levels of fear. In addition, prevention activities can only remind individuals of how insecure and anxious they are. Fear of crime is associated with many social harmful consequences as it affects the whole population. The following are just few examples, in schools the fear of crime destroys the atmosphere of learning; in the streets robbers cause people to stay indoors, lock their doors and windows, and install expensive alarm systems and bright lighting. People can respond to the fear of crime by moving to communities that seem safer.

2.4 THE COST OF CRIME

The cost of crime varies it can either be in monetary terms or in property terms. According to Higgins and Fitzpatrick (1958:26), the cost of crime can be defined in terms of both monetary and social costs. The monetary cost of crime is unreasonably high. The estimates for financial costs of crime often appear to be more precise than they are. However, crime costs much more than the estimates and even if one could measure how much crime occurs, it would remain difficult to estimate the cost of each offense. Conklin (1986: 66) mentioned six types of financial costs of crime. The first cost of crime is the direct loss of property. As vandalism destroys property, arson destroys buildings. Second, is the transfer of property; an example of this is theft. In this case, the victim regards himself or herself as having lost the property but, from a societal perspective, the property has been transferred from one person to another - rather than

made useless. Third, are the costs related to criminal violence where the victim is physically hurt. This leads to loss of productivity by incapacitated victims, unemployment compensation paid to victims, fees paid for physical and psychological therapy for victims and social security payments and funeral expenses associated with homicides. Fourth, is the expenditure of money on illegal goods and services such as drugs, prostitution and gambling. However, these illegal expenditures can sometimes be justified as entertainment expenses which are paid with income earned rather than stolen and they do not victimize anyone; for example, spending money on narcotics, prostitution or gambling.

Nevertheless, illegal expenditures are considered a cost of crime as they divert money from the legitimate economy and represent a loss of potential revenue for people who produce and supply legal goods and services. Law enforcement costs are the fifth kind of financial cost of crime. Maintaining the criminal justice system comes at a price. Even though the costs of the criminal justice system are not direct losses to victims of crime, they are however costs that result from societal decisions on how to respond to crime. For example, increases in the expenditure of the criminal justice system, such as raising police officials' salaries, escalate the cost of crime in one sense but they do not necessarily reflect greater direct losses to victims. Prevention and protection is the sixth aspect of the financial cost of crime; people spend lots of money installing alarm systems, spotlights, locks, bars and other target hardening devices to protect themselves from losses or theft.

The great cost of crime is its effect on the social life. Social costs of crime are indirect, for example: fear felt by citizens, suspicion of strangers, and skepticism of voters at election time as well as wariness of investors in the stock market.

2.5 CRIME AND THE CRIMINAL JUSTICE SYSTEM

2.5.1 Goals of the criminal justice system

Incompatibility often exists between the various goals of the criminal justice system (Levine et.al, 1986: 26). As a result, choices must be made and the law in action often reflects which

goals are given priority in a given place at a given time. Even though the purposes of criminal justice are greatly debated, the primary goal of a criminal justice system in a free society is to protect the members of that society. In addition, because crime and disorder disrupt stability in society, the criminal justice system also has the authority to maintain such order (Pursely, 1994: 6). Cole & Smith (2001: 14) and Cole (1992: 138) agreed that the criminal justice system has the following goals: crime control, prevention of crime and doing justice.

- **Crime control**

By apprehending, prosecuting, convicting and punishing offenders, the criminal justice system is serving the purpose of crime control. The efforts towards crime control must be carried out within the framework of law because criminal law not only defines what is illegal but also outlines individual rights and procedures to achieve system's goals.

- **Prevention of crime**

As mentioned above, taking action against offenders helps to control crime, however, the system must also attempt to prevent crimes from happening. There are various ways in which crime can be prevented. One cannot leave out the deterrent effect of police, courts and corrections' actions which not only punish those who violate the law (individual deterrence) but also provide examples that prevent others from committing crimes in the first place (general deterrence). Not only does crime prevention depend on the actions of criminal justice, citizens also have a role to play even though many people do not take the necessary steps to protect themselves and their properties. While crime control deals with an immediate situation and past criminal behavior, crime prevention deals with future situations, such as forecasting and forestalling future crimes through present interventions. One cannot separate crime control and crime prevention because, for example, the purpose of the arrest, conviction and correctional processing of an offender may be rehabilitation with the intent to prevent future criminals (Anderson & Newman, 1998: 22).

- **Doing justice**

Decisions that reflect legal, political, social and moral values must be made in pursuit of criminal justice goals. Doing justice is the basis for the rules, procedures and institutions of the criminal

justice system. Without the principle of justice there will not be fairness in the system. Offenders must be investigated, judged and punished fairly. Doing justice also requires upholding other rights of individuals and punishing offenders. There are three principles guiding the goal of doing justice:

- Offenders will take full responsibility for their actions
- The rights of every individual in contact with the criminal justice system will be protected at all times
- Offenses of the same stature will be treated alike with officials taking into account relevant differences between offenders and offenses. In a democracy, a system that makes doing justice a key goal, this is viewed as legitimate and is regarded as being able to achieve the secondary goals of controlling and preventing crime (Anderson & Newman, 1998: 22).

2.5.2 Characteristics of the criminal justice system

According to Cole & Smith (2001: 20), there are four major characteristics in the workings of the criminal justice system: discretion; resource dependence; sequential tasks and filtering.

- **Discretion**

According to Levine et al. (1986: 23), discretion “is the ability of an official to decide whether or not, or in what manner, a law will be enforced”. It is exercised in the day-to-day decisions of the officials and it is unavoidable. A high degree of discretion is present at all levels of the criminal justice process; this means that officials within the system have the freedom to act according to their own judgments and consciences. For example, the police decide how to handle a criminal situation, prosecutors decide on charges, judges decide on the length of the sentence while parole boards decide on when to release the offender. Such discretion should be in line with the law governing the country. Within the criminal justice system, however, officials have many factors to take into account and many options to exercise in a criminal situation. Discretion within the criminal justice system is needed due to the lack of resources to treat every case the same way; in addition, it permits officials to achieve greater justice than rigid rules would produce.

- **Resource dependence**

Agencies within the criminal justice system depend on others for funding as they do not generate their own resources. Hence, they should maintain good relations with other stakeholders such as political decision-makers (legislators, mayors, city council members). While some departments can generate revenues through traffic fines, as an example, it is never enough to sustain their budgets. It is important for agencies to maintain a good image and good relations with the public (voters) as they rely on budget decisions that are made by the elected officials who have a mandate to the public. In addition, positive coverage in the media on notable achievements also helps criminal justice officials as it promotes their image.

- **Sequential tasks**

Within the criminal justice system decisions are made in a specific sequence. Before the prosecutor determines the nature of the court's workload, the police must first make an arrest. Both judges and the prosecutor cannot by-pass the police by making arrests, neither can the correctional system detain anyone who has not passed through the earlier stages of the process. It is impossible to achieve the goals of criminal justice by acting out of sequence, as the system is highly interdependent. This is a key element in the exchange relationship among decision-makers who depend on each other to achieve objectives.

- **Filtering**

The process in the criminal justice system can be considered filtering as persons who have been arrested may, for example, be filtered out of the system at various points. It should also be noted that not many suspects who are arrested are then prosecuted, tried and convicted. Due to a lack of evidence or the decision that a crime has not been committed most suspects go free. In some instances, prosecutors may order that someone be sent to a substance abuse clinic rather than being sentenced to incarceration.

2.5.3 Components of the criminal justice system and their functions

Cavadino & Dignan (2007: 1) stated that the penal system cannot be examined in isolation from the larger criminal justice system. The system generally comprises of the police, courts and corrections. All the components in the criminal justice system share certain common goals as they collectively exist in order to protect society, maintain order and prevent crime. However, in their own special way they also contribute individually towards those goals. Pursely (1994: 7) and Cavadino & Dignan (2007: 2) outlined the components of the criminal justice system and their functions:

- **Police**

The process of the criminal justice system starts when the crime is reported to the police who will then investigate any suspected wrong-doing and make an arrest. Police are also vested with a wide-range of powers to carry out searches and to arrest and question suspects in pursuit of their investigation. In summary, the police fulfill the following functions (Pursely (1994: 7):

- **Prevent criminal behavior:** Preventing criminal behavior involves efforts that are directed towards eliminating the causes of crime. Such preventative efforts might include activities such as delinquency prevention program which reduces the likelihood of youth involvement in criminal activities as well as citizen education programs which educate citizens on ways to avoid victimization and how to act when victimized.
- **Crime reduction:** Not only are the police involved in preventing criminal behavior, they also have the responsibility to eliminate and reduce opportunities for criminal behavior. Such police programs as preventive and conspicuous patrol activity; intelligence and information gathering on crime-producing situations and known criminals and target hardening strategies that attempt to make certain physical sites less vulnerable to criminals are just a few examples of police crime reduction efforts.
- **To apprehend and arrest offenders:** Police are also involved in the investigation of a crime, gathering all the necessary evidence and presenting them to the court. In addition, they also have to testify in court against those who violate criminal law.

- **Protection of life and property:** The protection of a citizen's life and property is included in the wide-range of services offered by the police in areas such as the prevention of crime, crime reduction as well as investigation and apprehension strategies that are designed to protect society.
- **Regulation of non-criminal conduct:** In addition to the abovementioned functions, police have the responsibility to ensure that the laws concerning public safety and security are adhered to on a daily basis. These include activities such as traffic regulation and crowd control.

- **Courts**

Courts include all judicial agencies at all levels of government. The courts have the following functions:

- **Protection of the rights of the accused:** The courts have the responsibility to review the actions of the police and ensure that the accused's rights have not been violated. In addition, the courts also review the actions of other agencies in the entire criminal justice system so that they do not violate the rights of the convicted person.
- **Determination of guilt by all available means:** The courts must undertake a review of all the evidence presented by the police or private citizens in order to determine whether it is relevant and admissible, according to the set guidelines of acceptability. In addition, the courts also examine the circumstances that surround the crime as it relates to the issue it must adjudicate.
- **Properly dispose of those convicted of crimes:** Both the background of the accused and the circumstances surrounding the crime must be examined properly in order to establish possible sentencing alternatives, according to the prescribed laws.
- **Protection of the society:** The court fulfils the protection of the society by making sure that after the person is found guilty such person is removed from the society and detained.
- **Prevention and reduction of criminal behavior:** Like the police, the courts also have a role to play in the prevention and the reduction of criminal behavior. By imposing proper penalties, the courts deter future criminal activities by the offender and others who commit criminal acts that endanger the community (Cavadino & Dignan, 2007: 3).

- **Corrections**

Correction is the most important component of the criminal justice process. While there are other punishments that can be imposed, frequently, corrections remain the most widely used. It enforces the orders of the criminal courts and parole boards. Corrections serve the following functions within the criminal justice system (Cavadino & Dignan, 2007: 4):

- **Maintaining institutions:** As part of the criminal justice system, corrections have to maintain institutions to be able to receive convicted offenders sentenced to periods of incarceration by the courts.
- **Protect law-abiding members of the society:** The custody and the kind of security that corrections provide keep sentenced offenders removed from the society for them not to commit further crimes within the society.
- **To reform offenders:** Corrections has the responsibility to provide and develop programmes that will assist offenders to reform. In addition, during their time of incarceration, offenders must be prepared for their return to society after the end of their sentence. All correctional programmes are made-up of activities designed to remove the conditions that led to offenders' illegal behavior.
- **To deter crimes:** Not only does corrections develop programmes to reform offenders, it is also responsible for encouraging incarcerated and potential offenders to lead law-abiding lives through the experience of incarceration and the denial of freedom to live in society.

2.5.4 Relationship between the components of the criminal justice system

As mentioned above, the process of the criminal justice system starts with police and ends with corrections. Because corrections is at the receiving end of the whole process, the way in which the activities in other components of the criminal justice system affect corrections will be discussed here. As confirmed by Carter et al.(1975: 407), “a substantial obstacle to the development of effective corrections lies in its relationship to police and courts”. Because corrections receives its clients from other components of the criminal justice system it inherits any inefficiency, inequity and improper discrimination that may have occurred in any earlier step of the criminal justice process. This is because none of the components of the system are

mutually exclusive of the others, hence what is done in one has an effect on all the others. The suspect is apprehended by the police, prosecuted, acquitted or convicted, and sentenced by the courts, and removed, punished, and/or rehabilitated by correctional agencies.

- **The impact of police on corrections**

Although the police and corrections may seem to be the two components of the criminal justice system that are the furthest apart in the sequence of their operations and attitudes towards crime and offenders; their cooperation is, however, critically important if the criminal justice system is to operate effectively. Because of their responsibility to enforce the law and maintain order, police often view the locking-up of people as a solution to police problems. This is mainly because the police view the community at large as their responsibility; hence the removal of a known offender shifts the problem to someone else's shoulders and not the police's. Not only are the police intimately involved with the specific criminal offence, they often spend more time with the victims than with the offender, unlike correctional staff. Most police actions are influenced by the community's reactions towards crime; hence, their reaction may reflect the concepts of retribution and incapacitation rather than rehabilitation and reintegration which are the goals of corrections.

Unlike the police who are often confronted with the victim and the emotions surrounding the crime, correctional officials often take a longer view. While correctional officials are hoping that an offender will not commit further crimes after release, the police are hoping to achieve a short range objective which is to arrest a criminal. "Corrections, with its long-range perspective, is required, if not always willing, to take short-run risks. The release of an offender into the community always contains some risks, whether it is at the end of his sentence or at some time before. These risks, although worth taking from the long range perspective, are sometimes unacceptable to the police in the short-run" (Carter et.al, 1975: 409). In the long run, the failure of the correctional process leads to misunderstandings between police and corrections because the so-called parole violator or the individual who fails to reintegrate successfully adds a burden to police resources again.

The impact of police practices on corrections is important and often critical to the correctional system's ability to properly perform its functions. Because the police are the first point of contact with the law for law-violators, they exercise broad discretion to arrest; exercising such discretion determines, to a large extent, the clientele of the correctional system. Police decisions to focus on particular types of offences have an impact on the nature of correctional programmes that should be offered. A large number of arrests for offences that do not involve a significant danger to the community will not only result in the misallocation of resources but also in the improper distribution of scarce resources.

If police decisions on the use of discretion in making arrests are carefully outlined there would not be any uncertainties and misunderstandings between them and correctional officials. As a result, police and correctional officials would work together more effectively to achieve meaningful standards and policies. Failure to have such meaningful understanding and cooperation will, in the end, also affect community-based correctional programmes. Because offenders undergoing these programmes are most likely to come into contact with the police, the police's response has a greater influence on the offender's adjustment. A better working relationship between police and corrections can be achieved if both parties recognize that they are performing mutually supportive rather than conflicting functions.

- **The impact of the courts on corrections**

Because the courts determine who is guilty and who is innocent, and impose sanctions, they have an impact on corrections. While they also serve as correctional agencies in administering the probation system in other countries, the courts also review the constitutionality of prison conditions. However, the relationship between the courts and corrections involve sentencing. Sentencing forms an important part of the court procedure because a wide-range of sanctions can be imposed on an offender who is found guilty.

During sentencing it is determined whether an offender should be sent to corrections or not and the conditions under which they should serve their sentence. Like with the police, discretion also plays an important role when it comes to sentencing even though this has been limited by the use of determinate sentencing, sentencing guidelines and mandatory sentencing. The determination

of sentence by the courts affects the discretion of the correctional officials to administer correctional programmes.

The appropriateness of the sentence which is imposed by the court on the convicted offender will determine the effectiveness of the correctional programme. For example, if a convicted offender feels that his/her sentence is fair, this may influence his/her willingness to participate in correctional programmes unlike someone who feels that their sentence was unfair. In addition, correctional programmes will also be affected by any disparities in sentencing. An offender who is serving a 20 year sentence for the same act that another person is serving only 5 years for will have a negative attitude towards correctional programmes.

Although imprisonment is the most widely used sanction, probation and community-based programmes also continue to grow. Hence, it is important for courts and corrections to have a common understanding regarding the issue of sentencing and its impact on the individual offender. The courts should not just sentence offenders to imprisonment without fully recognizing what would occur after the sentence is imposed. Nevertheless, it is important that correctional officials acknowledge that to some extent they are officers of the court since they carry out court orders and - every now and then - are subjected to the court's continuing supervision.

As discussed, it can be concluded that corrections cannot be understood apart from its relationship with the other components of the criminal justice system. The success of each component in the system depends on the actions of the other components. Corrections must cooperate fully with the other components of the criminal justice system because they also perform a variety of correctional functions, some independent of and some related to the formal correctional system. Such functions occur throughout the entire criminal justice process from the police making an arrest, to the courts getting a conviction and, finally, when the offender becomes a client of the correctional system.

2.6 EXPLAINING CRIME PREVENTION

Crime prevention is a vague concept which has come to mean different things to different people (Koch, 1998: 21 & Naudé, 1988:11). For some, crime prevention might mean a programme such as a neighborhood watch while for others it might mean one of the varying theories of what causes crime and therefore what can be done to prevent it; for example, like getting rid of its causes. As Walklate (2005: 160) puts it: “there are three broad approaches to causes of crime, i.e. psyche, opportunity and structure and they all articulate different ways of thinking about crime prevention. Those who think that crime is caused by the criminal mind (psyche) might only opt for solutions that emphasize the importance of deterrence and incapacitation. Those who believe that circumstances lead to criminal behavior (opportunity) go for solutions that will change the social and/or physical setting in which crime occurs. Those who believe in the structural approach tend to believe that crime prevention can only be allowed if efforts are made to alleviate social and economical inequalities”. Over the years, crime prevention has been defined in many ways by many different public agencies and scholars. The National Crime Prevention Council (1997: 2) defined crime prevention as “a pattern of attitudes and behaviors directed at both reducing the threat of crime and enhancing the sense of safety and security, to positively influence the quality of life in our society and to help develop an environment where crime cannot flourish”. Graham and Bennet (1995: 9) defined crime prevention as measures that are aimed at tackling the dispositions of individuals to offend. Crime prevention covers all measures that are intended to reduce or otherwise contribute to reducing crime and citizens’ feelings of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions that reduce the potential for crime and its causes. Martin (1968: 325), however, believes that crime prevention is that activity which is directed towards sound personal development and adjustment, the provision of adequately preventive services and the improvement of environmental conditions. Nevertheless, crime prevention entails any action designed to reduce the actual level of crime and/or the perceived fear of crime (Lab, 2004: 23).

However, crime prevention should not be confused with crime control. While crime prevention involves any attempt to eliminate crime prior to the initial occurrence or before further activity,

crime control alludes to the maintenance of a given or existing level and the management of that amount of behavior. Prevention involves steps taken before and control involves steps taken after the commission of the crime. Unlike prevention, control fails to adequately address the problem of fear of crime. Crime prevention is pro-active and it encompasses all programmes or initiatives that are implemented in order to reduce the impact of crime. Crime control, in contrast, is reactive and it encompasses the controlling of specific crime events that have already occurred. While defining crime prevention by results rather than programme intent or content, Sherman and Hawkins (2001: 5) focused on three crucial questions: firstly, one should ask what the independent effect of each programme or practice on a specific measure of crime is; secondly, one should ask what the comparative return on investment for each programme or practice using a common metric of lost and crimes prevented is; and, thirdly, what conditions in other institutional settings are required for a crime prevention programme or practice to be effective or to increase or reduce its effectiveness.

2.7 CRIME PREVENTION TRENDS

Crime prevention is a difficult beast to tame. Recently, there have been four identifiable trends aimed at tackling crime. Each of these strategies has a different focus on where the cause of crime lies. Though they are not mutually exclusive and do not frequently exist side by side, these trends vary in their political popularity. They are offender-centered strategies, victim-centered strategies, environment-centered strategies and community-centered strategies (National Crime Prevention Institute, 1986: 2).

- **Offender-centered strategies**

In this category, crime prevention focuses on the individual offender as both the cause and the cure of crime. It is related to all initiatives that are undertaken by the correctional system. Within offender-centered strategies it is believed that the correctional system works because it acts as either a deterrent to crime or as a means of incapacitating the offender. Imprisonment acts as quarantine for the criminally contagious. The view of imprisonment as having a preventive role is most frequently associated with those who adopt a tough political stance on law and order that appeals to a wider range of people. Not only is the preventive role of imprisonment focused on

its deterrent role, it is also focused on its rehabilitative role which offers learning or behavioral work to individual offenders.

Another view on crime prevention, which is centered on the offender, is sociological rather than psychological in orientation. This is mostly visible in the youth justice system and social work that is primarily focused on getting young offenders to make amends for their offenses as a way of getting them to understand the impact of their offense on the victim, or the general community. Although offender focused work can take different forms, the rate at which most states are sending offenders to the correctional system seems to embrace the view that imprisonment works much more readily than others.

- **Victim-centered strategies**

Over the last few years, there has been an increase of attention on the victim of the crime. The interest is not only on the impact of crime on the victim but also on how the support of the victim might be harnessed in relation to crime prevention. Many of the messages are directed at ordinary members of the society and what they can do to prevent crime from happening to themselves. They teach the public to avoid victimization. Within the victim-centered strategy, attention is on the way in which everyday behavior affords opportunities for criminal behaviors. Focusing on the types of individual actions that make crime easier or harder to commit and trying to encourage the public to reduce the opportunities available for such criminal behaviors also has links with environmental-centered strategies.

- **Environmental-centered strategies**

These focus on the offenses rather than the offender. There are two policies involved within the environmental-centered strategies, i.e. policies concerned with target hardening and policies concerned with designing out crime. Examples of target hardening can be fitting a steering wheel lock and pin credit cards while designing out crime looks for ways in which housing estates or individual buildings can be better designed in order to either increase their means of surveillance or reduce areas for which no one feels responsible.

- **Community-centered strategies**

A community can be harnessed in the interests of crime prevention in four ways, i.e. the introduction of a neighborhood watch, multi-agency cooperation, community safety and a partnerships community. Neighborhood watch schemes are popular all over the world as they aim to harness members of the society to be the eyes and ears of the police with two objectives in mind: firstly, to increase the kind of surveillance that takes place within the communities routinely. Within neighborhood watch schemes, the kind of watching and noticing that frequently occurs within localities is heightened but with a view to encourage people to report only suspicious activities to the police. Secondly, the increased surveillance offered by neighborhood watch schemes result in increased social cohesion in communities. As a result, people find themselves in a situation where they can challenge behavior that is problematic for them.

Multi-agency cooperation emphasises that crime prevention is not the sole responsibility of the police but, rather, that it should be shared amongst agencies whose task is to work within any particular community. In this approach, the focus is on how the police, social services, youth justice and education might work together within a particular community to tackle crime problems. The focus between multi-agency cooperation and community safety is the same but within community safety problems within a particular locality are first identified so that policies can be developed accordingly. Community safety follows a bottom-up approach unlike the top-bottom approach which is followed by multi-agency cooperation. Partnerships, however, takes the notion of harnessing the community one stage further by both broadening and deepening the range of groups encouraged to take responsibility for crime prevention in a particular locality. Through this approach, an opportunity for clear and more direct involvement of those who are elected to have a say in how to tackle local problems is afforded. The business community is also included.

2.8 DEVELOPING A SUCCESSFUL CRIME PREVENTION STRATEGY

In order to develop a successful crime prevention strategy it is important to first understand factors that lead to the commission of criminal offenses. Factors such as poverty, inequality,

greed, relative deprivation, unemployment, lack of primary education, state violence, corruption and disregarding the rule of the law has been identified, by the United Nations, as some of the drivers of criminality (United Nations, 2008: 26). Although these factors would not necessarily result in crime, they are major risk factors which increase the possibility that people will turn to crime. For these reasons, Edelman & Rowe (1983: 395) developed a comprehensive crime prevention model which categorizes crime prevention on five levels.

Level 0: Also known as the pre-criminal level, this level implies the general improvement of physical and social conditions which involves indirect crime prevention activities such as effective prenatal care, mental health, day care for children, adequate housing and recreational facilities. There is no differentiation which is made between potential and actual offenders and the prevention of crime is not the main goal; instead, the main goal is social change.

Level 1: This level involves the prevention of crime by eliminating criminogenic factors in the physical and social environment as well as increasing popular awareness of the law and crime. Within the society, social responsibility and law-abiding attitudes and behavioral patterns as well as the reduction of victimization should be encouraged. Programmes in this level are only related to the awareness of the law and general security as potential offenders and victims are not identified.

Level 2: Within this level high risk factors which can promote crime are identified, including those individuals and groups who run the risk of committing a crime or being victims of crime. The main focus here is on intervention strategies for potential offenders which include youth and family counseling and advice as well as preventive strategies to protect potential victims from crime. The main aim in this level is not only to change the attitudes but also to change the behavior patterns of potential offenders.

Level 3: In this level, first minor offenders and victims as well as the sites or environments where crimes are committed are identified. The main aim behind the initiative is to prevent further contact by the offender with the law and to support the victim. Within this level, one can make a distinction between crime prevention and crime control. A crime is committed even

though no charge is brought before the police or the charge is withdrawn and the alleged offender voluntarily submitted to one or another diversionary measure which include street work, diversion programme, information and counseling. In contrast, programmes related to the victim concentrate on restitution, victim services and victim-offender reconciliation. While victims related programmes focus on better security measures, environmental programmes focus on observation and reporting.

Level 4: This level concentrates on controlling crime and preventing re-offending after intervention by the criminal law system and the imposing of the punishment. While programmes aimed at the offender focus on rehabilitation, victims' programmes are focused on restitution, compensation for injuries and psychological counseling.

Crime prevention strategies comprise of programmes that are directed towards the offender as an individual or programmes that are directed towards the crime situation which aim to limit or prevent opportunities for the commission of crime in the physical environment. Because crime is a complex phenomenon and is the result of multiple causes, a multifactorial approach should be maintained in its treatment and prevention. Higgins and Fitzpatrick (1958: 449) identified three steps in a crime prevention programme. Effective strategies that prevent crime should first acknowledge the crime risk and then develop actions that are designed to reduce those risks. For a crime prevention strategy to be effective it requires a thorough understanding of the crime problem in a particular area, where and when it happens, who is committing it and who is affected by it. Most crimes occur when the opportunity is presented. Most of it is not planned or very well thought through and, by removing the opportunity, it can be reduced and it increases the opportunity of the offender being caught. Crime occurs when the opportunity for committing is high and the risk of getting caught is low. Not only is crime more likely to occur in some places than others, it also occurs at certain times rather than others. In addition, it is also more likely to be committed against some people rather than others and against some things rather than others. The three steps mentioned by Higgins and Fitzpatrick (1958: 449) will now be discussed.

- **Step 1: Positive and creative social organization**

Every crime prevention programme should consider the effectiveness of social organization. Such social organization should have happy, content, cooperative individuals, living together with the realization of as many satisfactions of life as possible. Failure to have such organizations of social life will lead to social maladjustment, delinquency and crime. The first step, therefore, in a crime prevention programme is looking at community resources which will be able to help constructively achieve a worthwhile human order. The whole organization in the community life is in itself a programme of crime prevention. The provision of social aspects such as schools, churches, playgrounds, tennis courts, recreational centers and other social activities within the community provides all individuals within that community an opportunity for mental growth, better social adaptation, good citizenship and a fuller enjoyment of good life.

One should always bear in mind that human beings are individuals and though treating them in groups may be necessary at times, the greater concerns with social efforts remain with the individual. In order to raise a mass, one has to raise the individuals who constitute it. There are four elements in the organization of social life for positive results. The first element is the concern for the individual. The second element is related to schools in connection with large classes and untrained teachers: lecturers at college level are more likely to lose the individuals. It becomes difficult to see how the curriculum will help bring character formation if schools do not measure up to their responsibility, but if schools can really help students to think, observe carefully, ask questions intelligently, acquire knowledge which is related to their practical lives and is culturally viable to learn self-knowledge, self-control and self-reverence, a solid foundation for crime prevention is laid.

Thirdly, within the elements of positive social programmes is the training and the professionalization of law enforcement officers. Not only is it the responsibility of law enforcement to catch the criminal after commission of a crime but they also have the responsibility to prevent crime and facilitate social cooperation in ordinary affairs. For example, traffic officers whose main function is to facilitate rather than to seek offenders. Their efficiency does not lie on the number of arrests they make. In addition, the emphasis should be on professionalizing police services and making sure that there is an increase in the availability of

staff members who are well trained for their jobs from the top to bottom level of the organization. The fourth element of a positive social programme is the influence of religion. As George Washington puts it in his farewell address: “of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert the great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician equally with the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation deserts the oaths, which are the instruments of investigation in courts of justice. And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influences of refined education on minds of peculiar structure – reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle”. In a nutshell, religion must be more effective, be it in churches or schools.

- **Step 2: Individual and social diagnosis**

Second in the step towards a crime prevention programme is the discovery of the need for - and the provisions of - prevention against social disorganizations including crime and delinquency and the early regulation of social maladjustment. Those individuals who are likely to be influenced into a criminal career should be identified. In this step, two approaches should be followed:

- More interest should be placed on preventing the development of a criminal career before the pattern of maladjustment of the offender becomes fixed, rather than before the criminal situation presents itself. Focus should be on crime prevention and its sources, be it in schools, homes, and/or the community. Whether on a social, economic or psychological level, the criminal should be prevented.
- After preventing the criminal, the increasingly validated criminological concept to which scant attention had been paid in the fashioning of yesteryears’ traditional preventive programmes can be embraced. There are two sets of influential factors that operate simultaneously during the commission of the crime, i.e. predisposing factors which are rooted deeply in the past of the offender and those that currently exist in the contemporary

life of the offender (precipitating). Within the schools, other social aspects in the individual's past life that could lead to crime should be fixed. These social agencies should have knowledge of potential criminality and the steps that are necessary to help meet them. Otherwise, it will be difficult to deal with individuals if their problems have not been detected.

- **Step 3: Rehabilitative purpose of correctional institutions**

Throughout history there have been attempts to humanize, individualise and make rehabilitative the various instruments designed for the punishment or treatment of persons convicted of crime. While prisons became reformatories, crimes of juveniles became delinquency. There have been changes in institutional names from the penal aspect of the society to the correctional aspect when dealing with crime. There were two objectives in the social care of convicted offenders. Firstly, to ensure that convicted offenders do not get hooked on the criminal life and, secondly, to help offenders realize their better side and make positive use of their time while incarcerated.

Throughout history imprisonment has always been associated with hardened criminals, learning their exploits and their methods, their rebellion against society and their unacceptable habits. However, changes that have occurred have managed to change imprisonment from schools of crime to humane institutions. Such changes include the establishment of juvenile detention homes, separating males and females, the maintenance of conditions of self-respect in correctional centers, adequate standards of living, introduction of work for offenders, the organization of the admission process, psychiatric services, schools and libraries.

The criminal justice system accepts the rehabilitation of offenders as its primary objective and ensures that a changed person is returned to the society. No matter how professional or dangerous a criminal is, there are always rehabilitation opportunities for him or her. To ensure that the rehabilitation of offenders does not remain a pipedream, professional correctional administrators must be used; there should be a changed attitude towards offenders; there should be a constructive use of offenders' time by means of education and training; and, finally, there should be the availability of books, religious services and recreation. Given the current high recidivism rate, there seems to be a need for the evaluation of present practices. The effect of

rehabilitation programmes on all types of criminals should be determined to ensure that offenders return to society as useful citizens. In order to render crime prevention measures successfully and guarantee the sustainability of their positive results, all crime prevention activities must be well-planned, prepared, implemented and analysed.

There are four overlapping considerations in developing a comprehensive crime prevention strategy, i.e. deterrence, opportunity and criminality prevention; primary, secondary and tertiary points of intervention; short, medium and long term inputs and outputs; and national, regional, local policies, strategies and interventions.

- **Deterrence, opportunity and criminality prevention**

An effective crime control strategy must be able to deter people from breaking the law, primarily through the efforts of the criminal justice system but also by reducing the ease with which crimes can be committed. Policies of such nature are premised on deterrence and opportunity reduction which are based on a classical view of human nature. If a comprehensive crime prevention approach is to be followed, the positivist theories of human behavior should also be embraced. By doing this, there will be an understanding as to why people are inclined to offend in the first place.

Because crime is most likely to occur when a motivated offender converges with a potential victim or target, in the absence of a capable guardian, ways to reduce crime should include reducing people's motivation to commit crime, making targets or victims less vulnerable and increasing the presence of capable guardians such as police, warders, and active citizens, amongst others. Even though this might be appropriate for most locational crimes, it becomes difficult to apply the same methods in situations where the offender and the victim are one and the same person; for example, drug misuse. A variation of this triangle is used by some crime prevention through environment design converters who put the offender, the victim and the location as the three points capable of providing intervention. This method is useful for property crimes from premises to vehicle crimes but it is less relevant in cases that involve domestic violence and child abuse.

- **Primary, secondary and tertiary points of intervention**

It will be more effective to intervene at three points in the risk cycle than to intervene at a single point.

Primary prevention: According to Crawford (2007: 870), primary prevention involves work that is directed at the general population and places in order to address potential criminogenic factors before the onset of the problem. In primary prevention, physical and social environment conditions which provide opportunities for criminal activities are identified so that they can be altered to ensure that crimes are not committed. Interventions of this nature may include security and personal safety advice as well as universal interventions such as health and inclusive education. Also included within prevention are: environmental design, neighborhood watch, general deterrence, private security and education about crime and crime prevention. Within environmental design is a wide range of crime prevention techniques which are aimed at making crime more difficult to commit for the offender, surveillance easier for the residents and feelings of safety more widespread. Building plans which are more conducive to visibility are used, including the addition of lights and locks and the marking of property for ease of identification when there is an emergency. Neighborhood watch and citizen patrols are used in order to increase the ability of residents to have control over their neighborhood and add the risk of observation for potential offenders (Lab, 2004: 24).

Even some activities that are conducted by the criminal justice system also fall under primary prevention. For example, police presence may affect the attractiveness of an area of crime as well as reduce the fear of crime. Moreover, the courts and the correctional system, by increasing the perceived risk of crime for offenders, influence primary prevention. If there is public education regarding the actual levels of crime and the interaction of the criminal justice system, the public may form a perception on crime. Private security can also add to the deterrent efforts of the formal justice agencies.

In addition, primary prevention also deals with social issues related to crime and deviance. Within primary prevention, there is a connection between antisocial behavior and certain facts and circumstances hence issues such as unemployment, poor education, poverty and similar social ills are dealt with. In a nutshell, primary prevention is aimed at individuals who have not

yet committed crimes. There are four approaches to primary prevention, i.e. mechanical prevention, corrective prevention, creative prevention and prevention through omnipresence. Mechanical prevention is aimed at altering the physical environment in order to prevent the commission of the crime (Naudé, 1988: 12). It is mostly concerned with security and is aimed at protecting people and their properties from crime. Healy (1968: 12) mentioned three lines of defense which can be applied, namely: outside impediments which comprise of fences, walls, lookout towers, boundary lighting, alarm systems, watches and patrols; external impediments which comprise of bars and locks on windows, doors or other entries to deny access to property; and internal impediments which comprise of internal structural planning of the building, safes and electronic detecting apparatus.

Within corrective prevention, it is believed that criminal behavior is caused by certain motives and factors and then that should be treatment that is applied after an individual has been identified as an offender or potential offender. Within corrective action the offender's physical, psychological and social environment is manipulated. In creative prevention, an environment where all members of a particular society participate actively in the crime problem and the efforts towards its prevention is created. After identifying a crime problem, the public prevention through omnipresence invokes the elimination or the lessening of opportunities for crime through the presence of patrol officers.

Secondary prevention: Brantingham and Faust (1976: 284) stated that secondary prevention is “directed at early identification and interventions in the lives of individuals or groups in criminogenic circumstances”. In this level, potential offenders are identified at early stages in order to prevent future criminal activities. Crawford (2007: 570) writes that secondary prevention involves working with people or places which are identified as ‘at risk’ because of some predispositional factor. Within secondary prevention the criminal problem already exists and measures have to be taken to strengthen the resistance of certain individuals or targets from becoming victims. In the quest for crime prevention, secondary prevention involves organizations such as the police, courts, places of safety, places of custody, the correctional system and the community. Because it deals with a particular situation or circumstance associated with a given offender and offence, secondary prevention is more effective than

primary prevention (Trojanowicz, 1978: 214). Even though in this situation the crime has already taken place, its repetition can be prevented by getting rid of certain situations and circumstances or by treating the offender. Although many secondary prevention efforts may resemble activities listed under primary prevention, the difference rests on whether the programmes place a greater focus on keeping problems that lead to criminal activity from arising (primary prevention) or whether the efforts are focused on factors that already exist and are fostering deviant behavior (secondary prevention) (Lab, 2004: 26). There are two approaches to secondary crime prevention, namely: the punitive and rehabilitative approaches.

Punitive prevention involves the fear of punishment which in turn deters an individual from committing crime. Punitive prevention is based on instilling fear in the offender and the potential offender. Punishment can either be positive or negative. While positive punishment implies the actual administration of pain or suffering on the offender, negative punishment deals with the efficient detection of crime which then increases the certainty of detection, prosecution and punishment. Negative punishment implies that mere contact with the administration of justice contains a punitive element without any necessity for physical suffering in the form of punishment. While the police plays an important role in negative punishment since they are responsible for detection of crime, the courts plays an important role in positive punishment since they are responsible for sentencing offenders.

Punitive prevention comprises of individual and general prevention. Individual prevention is aimed at those who have already been convicted of crime (Rabie & Strauss, 1981: 25). Individual prevention applies to those offenders who have been detected, tried and punished; hence, it is based on the principle of using incapacitation or deterrence to prevent the offender from repeating the crime. Incapacitation refers to the effect of a sentence in terms of positively preventing rather than merely deterring future offending. Imprisonment incapacitates the offender by physically removing them from the community that they have offended. When discussing incapacitation, one should differentiate between total incapacitation and partial incapacitation. In total incapacitation measures such as the death penalty - which removes the ability to carry out crimes permanently - are used. In partial incapacitation forms of punishment that restrict the offenders' freedom - such as imprisonment - are used. By removing the offender

from the community, the community is guaranteed that it is safe. However, protection of the community through imprisonment depends, to a large extent, on the period of their sentence because, either way, offenders still have to return to their communities after serving their sentences. Individual prevention through deterrence like incapacitation is concerned only with the offender who has committed the crime. The underlying principle within individual deterrence is that a person who has once been subjected to the pain brought about by punishment will refrain from criminal behavior as a result of the unpleasantness of the punishment experience.

General prevention, however, refers to the “ability of the criminal law and its enforcement to make citizens law abiding. If general prevention were 100% effective, there would be no crime at all. General prevention may depend on the mere frightening or deterrent effect of punishment outweighing the temptation to commit crime” (Andenaes, 1952: 179). In general prevention the idea is that punishment, as a concrete expression of society’s disapproval of an act, helps to form and strengthen the public’s moral code and thereby creates conscious and unconscious inhibitions against committing crime. It is possible to influence unconscious inhibitions against committing forbidden acts without appealing to the individual’s concepts of morality. Purely as a matter of habit, with fear, respect for authority or social imitation as connecting links, it is possible to influence a positive attitude towards this or that action and an unfavorable attitude towards another action. In summarizing, one can conclude that general prevention may have a deterrent effect, may strengthen moral inhibition (a moralizing effect) and may stimulate habitual law-abiding conduct.

Rehabilitative prevention which is the second in the approaches to secondary prevention aims at influencing the personality of the offender so that he or she can become a law-abiding citizen after release from custody. Unlike punitive prevention which is based on the fear of punishment and morality, rehabilitation rests upon methods or measures that lead to offender reform. Within the rehabilitative approach it is believed that human actions are the product of certain causes and if such causes can be identified, therapeutic measures can be administered to effect positive changes in behavior of the person subjected to such treatment.

Tertiary prevention: Tertiary prevention focuses on the actual offenders with the purpose of preventing further criminal behavior. Many tertiary prevention efforts rests within the work of the criminal justice system which includes activities such as: arrest, prosecution, incarceration, treatment and rehabilitation. In addition to the efforts of the criminal justice system, there are non-justice efforts such as private enterprise correctional programmes, diversionary justice within the community and some community centers. Because of the traditional place in other texts and the greater volume of writing on them, tertiary crime prevention is often ignored. Nevertheless, to ensure effectiveness in tertiary prevention the following should happen (Gendreau & Andrews, 1990: 181):

- Offenders should be carefully assessed to determine their risks and needs. While low risk offenders do not require more intensive treatment, medium and high risks offenders, however, should be subjected to intensive intervention.
- The type of intervention that offenders undergo should be behavioral in nature with more emphasis on cognitive and skill building strategies. Interventions should focus on attitudes, values and beliefs that deal with anti-social behavior as well as concrete steps taken towards higher levels of reward and satisfaction in non-criminal pursuits.
- It remains the responsibility of the criminal justice system to critically assess whether limited programme resources should be applied to programmes utilizing criminal sanctions.
- Because of their effectiveness, institutional programmes should not be abandoned. Rather, they should be linked with community-based interventions where the strongest treatment effects have been found.
- Conditions should be established in such a way as to ensure that programmes initiators and evaluators are intimately involved in all operation phases of the treatment process.

There are many refinements and variations on the simple model of crime prevention. The three levels of prevention, i.e. primary, secondary and tertiary prevention are sometimes divided into four subcategories. The subcategories are: situational crime prevention, developmental crime prevention, community crime prevention and law enforcement (Tonry & Farrington, 1995: 2). Situational prevention implies interventions designed to prevent the occurrence of crimes, especially by reducing the opportunities and increasing the risks. Developmental prevention implies interventions designed to prevent the development of criminal potential amongst

individuals, especially those targeting risk and protective factors discovered in studies of human development. Community prevention implies interventions that are designed to change the social conditions that influence offending in residential communities. Law enforcement implies all the efforts, by the components of the criminal justice system, to prevent crime. Crime prevention has always been regarded as one of the elements of law enforcement and the criminal justice system in general. Hence, for the purpose of the study, emphasis will only be on the efforts that are made by law enforcement in preventing crime.

- **Short-, medium- and long-term inputs and outputs**

When people are suffering from the effects of crime, they want immediate actions. Such immediate actions can be improved lighting or extra security patrols. However, such measures make up only a part of the picture and are unlikely to achieve sustainable improvements. In addition, there should be medium and long-term interventions which are more likely to be sustainable because they will start to address the root causes of crime. While medium-term measures may include design and management changes, long-term measures may include parenting, child development and educational interventions.

- **National, regional, local policies, strategies and interventions**

Though crime affects individuals, such individuals live in neighborhoods which are managed by local authorities and area police forces who are affected by regional trends, national policies and international developments. When developing and managing an effective crime prevention policy, national, regional, local and international strategies and interventions should be considered.

2.9 THE EVOLUTION OF CRIME PREVENTION

The idea of crime prevention is as old as mankind. Throughout history, societies have practiced some primitive methods for crime prevention. People have used natural and man-made barriers, military and vigilante forces as well as a variety of necessary mutual protection to defend against attack by enemies or outlaws in every culture, up to and including modern times (National Crime

Prevention Institute, 1986: 9). Crime prevention in the Ancient tradition, the English tradition, the American tradition, the contribution of criminology in crime prevention and crime prevention in the modern era will be discussed.

2.9.1 Ancient tradition

There have been different methods which have characterized each society's response to crime based on the historical periods from which they sprang (Sutherland & Crissey, 1974: 300). Throughout history, punishment of the offender, either to correct him or her or to serve some social purpose has been but one response. Only the king or any authoritative figure had the task of dealing with offenders on behalf of the society as a whole. Even though the society's reaction to crime was punitive, the punishment inflicted did not reflect the belief that the offender's pain itself had some redeeming value. Punishment in this era was used to repay the victim's loss; mutilation was used to show others that the offender was untrustworthy; and murder was used to settle the score or remove an unwanted citizen from society. However, the control of crime by the state led to vengeful acts on criminals and, when inflicted, punishment was to ensure that the offender does not repeat his or her criminal act; that he or she makes proper reparations and that he or she serves as a horrible example to other prospective criminals. Punishment was then characterized by flogging, amputation of limbs, branding and a variety of forms of painful death even for undeserving offences.

As mentioned earlier, crime prevention is not a new idea. In the Bible, God warned Adam and said "you are free to eat from any tree in the garden, but you must not eat from the tree of knowledge of good and evil, for when you eat from it you will certainly die" (Genesis, 2: 16 – 17). Though most of the programs or ideas referred to as crime prevention today can be traced to different historical developments, one can conclude that the reaction to the problem of crime was initially left to individuals and families. Even in the laws of Moses, a lengthy and elaborative guide to conduct Hebrew affairs was provided and it was stipulated that "if a person sins because he does not speak up when he hears a public charge to testify regarding something he has seen or learned about, he will be held responsible" (Leviticus, 5: 1). Additionally, "if a man takes the life of any human being, he shall surely be put to death. The one who takes the life of an animal shall

make it good, life for life. If a man injures his neighbor, just as he has done, so it shall be done to him: fracture for fracture, eye for eye, tooth for tooth, just as he has injured a man, so it shall be inflicted on him” (Leviticus, 24: 17 – 20).

The Code of Hammurabi is the most famous early attempt at crime prevention which can be traced back to 1772 BC. The code was designed to bring together both secular and raging proscription in an attempt to standardize punishment for offenders while also attempting to define rights and wrongs of human behavior. The Code of Hammurabi was designed to administer punishment for crimes committed. During his reign, Hammurabi was known to be a fair, righteous, humble and just ruler hence the core principle of the code has carried out throughout the ages. The laws of Hammurabi kept the well being of the societies by attempting to keep order and peace amongst the people, through initiation of unity under the same sets of laws and standards. In addition to the principle of an eye for an eye, which approves self-help and individual efforts to prevent crime, the code also stated the following first approaches to crime prevention (National Crime Prevention Institute, 1986: 9):

- If the builder builds a house and it collapses and causes the death of the owner of the house, the builder must also be put to death
- If that house causes the death of a son of the owner, the son of the builder must also be put to death
- If it causes the death of a slave of the owner, the builder must give the owner a slave of equal value
- If that house destroys property, the builder should replace the property and because the builder did not make the house firm it is his responsibility to rebuild the house at his own expense.

2.9.2 The English tradition

In order to meet the challenge of the increasing crime rate that accompanied the developing English nation, Oliver Cromwell attempted to set up a strong police force in 1655 (National Crime Prevention Institute, 1986: 9). This was mainly because England was at that time in

transition from a rural to an urban way of life, which posed a great challenge to its system of policing. As a result, Lord Cromwell placed the country under military police which was organized in 12 police jurisdictions across England and Wales. After Cromwell was forced to abandon the plan, crime control was returned to the hands of the judicial system and its enforcers and, for a time, punishment was again supreme.

In an attempt to provide a police-like alternative to the corrupt, inefficient and self-serving judicial system, Thomas De Veil organized a group of thief-takers and informers in 1729. De Veil was one of the very few magistrates who tried to enforce the law at all as he was never afraid to make enemies. Through the use of thief-takers and informers, De Veil was the first Britain magistrate of the century to make a serious attempt to reduce crime. In addition to taking on one of the country's most powerful gangs, he had the leaders arrested, brought to justice and disbanded their gangs. However, because his thief-takers and informers were only paid upon conviction of criminals, they tended to choose their victims carefully and left organized criminal gangs alone because of the danger of reprisals. These led to the downfall of De Veil's agents as they would plant evidence on innocent persons in order to maintain their incomes.

In 1748, Henry Fielding succeeded De Veil. Fielding has a significant place in the history of law enforcement as he is well-known to have developed the first police force in England (National Crime Prevention Institute, 1986: 11). After realizing that, in addition to the high crime rate and the lack of availability of real police, constables who were chosen along with the night watchmen were either too disorganized, too feeble, or too frightened of the powerful gangs on the streets, Henry Fielding drew up plans to control crime. Firstly, he converted his house into a police station and then hired a few of his best constables to serve as more or less permanent police officers. In an attempt to develop the necessary conditions for crime control and prevention, Fielding replaced corrupt or inefficient constables with hand-picked men who have proven their ability and good character. While developing a police force, Fielding had two objectives: firstly, to stamp out existing crime; and, secondly, to prevent outbreaks of crime in the future. However, he realized that his objectives could not be achieved without a strong police force, co-operation with the public and removal of the causes of crime and the conditions in which it flourishes.

In order to make people aware of the kinds of crimes being committed, Fielding also started a newspaper called *The Public Advertiser*. The paper listed stolen properties and encouraged people to help recover the stolen items. By the time of his death, Henry Fielding had received funding to expand the distribution of *The Public Advertiser* to establish a register of criminals and to recruit more handpicked runners who were available at all times to investigate and prevent crime. When Henry's half brother, John Fielding, took over as magistrate, he also nurtured the idea of a preventive police force. He worked on the plans of his brother and emphasized the work of the newspaper. The following was noted in one of *The Public Advertiser's* adverts: "Whereas many thieves and robbers daily escape justice for want of immediate pursuit, it is therefore recommended to all streets, or whose shops or houses shall be broken open, that they give immediate notice thereof, together with as accurate description of the offenders as possible, to JOHN FIELDING, Esq; at his house in Bow Street, Covent Garden: By which means, joined to an advertisement, containing an account of the things lost (which is also taken in there) thieves and robbers will seldom escape; as most of the principal pawnbrokers taking this paper, and by the intelligence they get from it assist daily in discovering and apprehending rogues. And if they would send a special message on these occasions, Mr. Fielding would not only pay that messenger for his trouble, but would immediately despatch a set of brave fellows in pursuit, who have been long engaged for such purposes, and are always ready to set out to any part of this town or Kingdom, on a quarter of an hour's notice. It is hoped that the late success of this plan will make all persons for the future industrious to give the earliest notice possible of all robberies and robbers whatever."

It took over 50 years to establish a formal police force in England after John Fielding's death. In 1825, Sir Robert Peel, who was then Home Secretary set up a select committee to consider the state of existing police offices, watchmen, constables and Bow street patrols and began to contemplate some form of centralization. This was after the question of maintaining law and order had become a matter of public concern. There were serious concerns of crime and public disorder and the existing system of police was useless; moreover, by 1829, the Metropolitan Police Act was passed by parliament and the idea of a preventive full-scale police force became a reality. Over the following years crime prevention was emphasized on police handbooks as the essence of police duty. The following were identified as the principles of crime prevention which

cannot be replaced by anything, even the detection of crime (National Crime Prevention Institute, 1986: 13):

- The basic mission for which the police exist is to prevent crime and disorder.
- The ability of the police to perform their duties is dependent upon the public approval of police actions.
- Police must secure the willing co-operation of the public in voluntary observations of the law to be able to secure and maintain respect for the public.
- The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
- Police seek and preserve public favor not by catering to public opinion, but by constantly demonstrating absolute impartial service of the law.
- Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found inefficient.
- Police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police by being only members of the public who are paid to give full-time attention to duties which are incumbent upon every citizen in the interests of community welfare and existence.
- Police should always direct their actions strictly towards their functions and never appear to usurp the powers of the judiciary.
- The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.

By 1856, the process of establishing an organized police force through the whole of Great Britain was completed. However, the emphasis on crime prevention did not last because the police became more occupied with investigating crime and apprehending criminals and put less effort into preventing crime. The focus on crime prevention only returned after World War II. A national crime prevention campaign was held during 1950 and 1951 through films, exhibitions and printed materials. By 1956 there were multiple activities directed towards crime prevention such as standardized techniques for publicizing crime hazards and for recommending crime prevention tactics and formal liaisons between insurance companies and the police. The Home

Office crime prevention training centre, which offered formal training in crime prevention to all police officials in the United Kingdom, was established in 1963. This was followed by a comprehensive national crime prevention program which featured a wide variety of training activities as well as the co-ordination of insurance, private security, police efforts and mass media. This led to crime prevention being an integral part of police activity in the UK.

2.9.3 The America tradition

Unlike in Britain, where national police force with local sub-divisions was developed and emphasis was placed on preventative policing, the development of police forces in the United States has not been uniform. Crime prevention and loss reduction have been a key activity of the private security field in the United States since its inception 100 years ago. Though crime prevention has only become part of law enforcement recently, opportunity reduction has been part of law enforcement ever since, for example, the branding of cattle. Juvenile delinquency prevention also developed at a later stage of law enforcement. Finally, in the early 1960s, opportunity reduction projects such as operation identification began to emerge in a few police departments.

After undertaking a Ford Foundation program of research in burglary prevention, Professor John C Klotter suggested the establishment of crime prevention units within police departments. He was responsible for the establishment of the National Crime Prevention Institute (NCPI) which was the first formal crime prevention training institution for police officers in the US. After six years of its existence, the NCPI had trained 4000 police officers, criminal justice planners and administrators, local government officials, volunteer leaders, national association officials and private industry representatives in the principles and practices of crime prevention (NCPI, 1986: 15). Continuing information, as well as postgraduate training and technical assistance, was also provided for them. John C Klotter is credited for bringing crime prevention to the United States. Since the NCPI has become a national resource for the development of local, state and national crime prevention programmes in both the public and the private sector, up until this day the NCPI still provides training, information and assistance aimed at crime prevention for ever-increasing numbers and kinds of individuals, agencies and organizations. Even though the NCPI exists, there has yet to emerge a comprehensive and co-ordinated national crime prevention

campaign in the US and such responsibility has been given to the National Crime Prevention Council.

Crime prevention efforts have grown significantly since 1971 as it is estimated that over 85% of cities have a crime prevention specialist within their police departments. In addition, 25 states have already or are currently developing campaigns aimed at crime prevention. Other departments or bodies, such as the Federal Bureau of Investigations, the Department of Housing and Urban Development, the Department of Defense, the Department of Commerce and the National Institute of Justice, amongst others, have participated in one way or another in crime prevention efforts. Even the national service, voluntary and public interest organizations are well behind crime prevention efforts. They include American Association of Retarded Persons, the National Exchange Club and the National Sheriffs' Association.

2.9.4 The contribution of criminology in crime prevention

In order to understand the evolution of crime prevention, one first has to understand the building blocks of criminological theory and their impact on crime prevention (NCPI, 1986: 16 & Koch, 1998: 16). Since criminology was introduced, it has had a conflicting and controversial effect on society's response to crime. Criminology is concerned with the study of the nature, extent, causes and control of criminal behavior in both the individual and society. According to Johnson (1978: 65), criminology is carried out by a confederation of practitioners in law enforcement, courts, probationers, correctional system, juvenile institutions, parole, private and public welfare agencies as well as various prevention programmes also known as the criminal justice system. There are several schools of thought that have developed in criminology; these include the classical school, the positivist school, the neo-classical school, the sociological school and the contemporary school.

- **The classical school of criminology**

The classical school of criminology is based on an approach that emphasizes free will and rationality on the part of the criminal actor (Hagan, 2011: 97). Beccaria is credited with having founded the classical school of criminology. In his theory, Beccaria stated that only conduct that is dangerous to the state or to other people should be prohibited and that punishment should be

more severe than deemed necessary to deter persons from committing crime (Yablonsky, 1990: 426). Beccaria's publication, in 1764, marks the origin of the classical school. Before the formulation of the classical school, the administration of criminal justice was cruel, uncertain and unpredictable. Beccaria was affected by the arbitrary nature of the judicial and penal system of his time: which were harsh, exacted confessions by means of torture and were only beneficial to those who had the power. Because potential offenders had no way of anticipating the nature of criminal law and its accompanying penalty if violated, punishment had a little deterrent value. Hence, Beccaria proposed various reforms to make criminal justice practice more logical and rational and to do away with the cruel, unnecessary and unpredictable nature of punishment.

Beccaria believed that a modern criminal justice system should guarantee all people equal treatment before the law. He identified three types of crimes that deserved punishment, i.e. crimes that threatened the security of the state, crimes that injured citizens or property and crimes that ran contrary to social order (Hunter & Dantzker, 2002: 28). Another person credited with the development of the classical school is Jeremy Bentham who, like Beccaria, also postulated that the human being is a free individual who thought and acted rationally and logically. Bentham's work was governed by utilitarian principles which assumed that all human actions are calculated in accordance with their likelihood of bringing happiness or anger (Adler et al., 1994: 58). According to Bentham, individuals will choose pleasure to be derived from criminal acts. The belief was that before people can participate in any criminal act, they weigh their benefits and losses and if their losses are greater than their gains, then they will be deterred from committing crimes. However, according to Bentham punishment should be severe enough, it should not be excessive. In addition, punishment should also be swift, meaning that it must take place within a reasonable period of time so that the reason for punishment was not forgotten by the observers or by the offender. Also, punishment should be certain; this means that the potential of being caught and punished had to be reasonably high.

In the classical school, punishment must fit the crime rather than the criminal. Within the classical school, punishment was based on proportionality which means that: (i) the severity of punishment should correspond with the severity of harm done by the crime in order to ensure that crimes that are more serious receive punishments that are more serious; (ii) the type of

punishment resembles the crime in order to ensure that other members of the society can associate the punishment with the crime (Carabine et al., 2009:55).

However, the classical theory of criminology had its difficulties (Gilling, 1997: 27). Classical theory was instead based on armchair theorizing in which the criminal was represented by the rational man of utilitarian thought and legal individualism. According to Joyce (2009:12), placing too much emphasis on rationality created problems for the classical school. Though some individuals were capable of making rational choices, some were incapable of making such choices. In addition, factors such as poverty might override logical considerations and cause people to lead a life of crime. Classical theory ignored social and environmental pressures in criminal behavior. Even though Beccaria emphasized that the law should see no rich or poor, he undermined social divisions which ensures that access to law was unequal. Thus, even though Beccaria stated that punishment should be applied equally where the crimes were similar, he ignored the fact that criminals themselves are not similar (Jones, 2001: 110). In his theory, he viewed all individuals as equal; this meant that a two year old was equally as liable as a thirty year old, the mentally ill would be treated the same as sane people and first time offenders will be treated the same as recidivists. Moreover, there were no differences between crimes committed intentionally and accidentally. Another difficulty in the application of classical theory was the notion of proportionality. In the principles of proportionality, the greater the reward, the harsher the punishment; however, in classical theory the harshest punishments were reserved for serious crimes such as murder which do not necessarily bring greater rewards to the offender. In the classical school, views concerning the commission of crime and the way society should respond to it were based on philosophical speculations rather than being derived from the results of social scientific enquiry (Joyce, 2006: 4). Within classical theory, the importance of discretion was underemphasized even though it is often seen as an important skill by those who work in the criminal justice system.

- **The neo-classical school of criminology**

As mentioned in the previous section, the classical school had its own weaknesses. One of the main weaknesses was its focus on the criminal act (Mannle & Hirsch, 1988: 71). According to the classical school of criminology, the seriousness of the offense determines its punishment

while the intention to commit such a crime has nothing to do with punishment. The idea of identical punishment for identical crimes as well as the concepts of free will and rationality was flawed because punishment was frequently very severe. Because of fixed and unchangeable sentences, it became difficult to consider aspects such as differences in an offender's environment, an offender's prior criminal record or even an offender's mental abilities. Not only does classical criminology fail to consider that aggravating and mitigating factors sometimes caused similar crimes to differ in significant ways, it also failed to recognize that punishment affects different people in different ways.

Because there is no society which will permit its children and other helpless incompetents to be treated the same way as career criminals, some countries began to modify their classist legal code (Vold & Bernard, 1986: 26). The changes that were made in classical criminology developed into neo-classical criminology. Though the neo-classic criminology made some adjustments to classist criminology, it did not destroy its basic tenets such as the doctrine of human nature (Joyce, 2006: 4). However, some changes which acknowledge that some people were not based on free will and that rationality might be affected by factors such as poverty, mental illness and other weaknesses were made.

The beginning of the neo-classic approach can be traced back to France (Hagan, 2011: 100). The neo-classic school identified environmental, psychological and other mitigating circumstances as modifying conditions to the classic doctrine. After realizing that every individual who committed a certain act against the law is punished the same way, the French system quickly noted that not everyone should be punished equally for certain acts. The French system concluded that sentencing first time offenders in the same manner as repeat offenders did not make sense at all, especially in a situation where the first time offender is a minor. The same was determined with regard to the mental capacity of the offender. As Naude (1998: 5) puts it, "the neo-classical school adopted the free approach to a certain extent by acknowledging that free will is restricted by certain forms of pathology, mental illness and incompetence". The main difference between the classical and neo-classical schools is that the latter takes into account contextual circumstances of the individual or situation that allow for increases or decreases in punishment (Tibbetts & Hemmans, 2010: 66). This is because it recognizes that, under certain conditions, people did not always act rationally and sometimes there are circumstances in which freedom of

choice was limited. As Walsch and Hemmans (2011: 77) stated, “criminal behavior is ultimately a choice, the choice is made in the context of personal and situational constraints and the availability of opportunities”. States that use classical tenets also incorporate elements of the neo-classic, i.e. allowance for mitigating and aggravating factors, consideration of youth, insanity, necessity, duress, self-defense, ignorance and intoxication (Hunter & Dantzker, 2002: 31).

- **The positivist school of criminology**

The belief that crime was committed as a result of the rational calculation of losses and benefits was challenged during the 19th century when the new approach - referred to as positivism - was introduced (Joyce, 2006: 13). The positive school of criminology emphasised that criminals are motivated by factors that they have no control over and that they do not possess free will. In this theory it is believed that individuals are determined by factors such as biology, psychology and social position and, instead of punishment, they require some form of intervention. Unlike the classic school, the focus in the positive school is on the offender rather than the act. Instead of believing in strict definitions of criminal laws and the sentencing that follows, positivists support broadly defined criminal laws and sliding scales of punishment which determine whether the offender is responsible for his act or not. After such determination, sentences that are aimed at both protecting society and rehabilitating the offender can then be passed. Matza (1964: 5) summarized the three major characteristics of the positive school:

- The criminal is a specific type of person: for example, a criminal can either be a born criminal, emotional criminal, morally insane criminal and the masked epileptic criminal
- The criminal differs from others: every offender has different characteristics which may range from body parts, body types and personality types. In addition, the offender can differ from non-offenders
- Factors outside the person’s control drive him or her to crime: positivism is a deterministic theory which seeks to explain why criminal conduct is out of the control of the criminal who perpetrates criminal acts.

Three Italian criminologists are credited with the development of the positivist school of criminology, i.e. Cesare Lombroso (1836 – 1909), Raffaele Garofalo (1852 – 1934) and Enrico Ferri (1856 – 1928). They all believed that with the exception of those deemed born criminals, identifying the causes of crime in the individual offender would allow for effective treatment. The positivist school identified crime as a sickness and emphasized the rehabilitation of offenders, intermediate sentences and the dominance of professionals in the treatment of offenders. Lombroso is considered the founder of the positive school of criminology because he rejected criminality as a result of free will and rational decisions on the premises that criminal subjects should be studied in their social contexts. After studying the physical and psychological characteristics of offenders and mental hospital patients in order to identify common features which are associated with criminal tendencies, Lombroso concluded that there are different types of criminals. The main types of criminals, according to Lombroso, were born criminals whose biological inferiority determined their anti social criminal behavior (Mannie & Hirschel, 1988: 76). Born criminals, according to Lombroso, were most serious and violent criminals in any society and they should be the target in addressing crime since they cannot be stopped from their natural tendencies to be antisocial. He proposed that born criminals should be isolated from society because their condition was untreatable.

Other types of criminal offenders, according to Lombroso, fell within six categories: the habitual or professional criminals, who engage in crime as a trade or occupation, the morally insane, criminoids, the juridical criminal, the hysteric and those offenders who violated in crimes of passion (Hunter & Dantzker, 2002: 36). Morally insane offenders are those who had mental problems and some kind of addiction, be it alcoholic or drugs. Criminoids are occasional or situational offenders whose engagement in criminal activities is the result of factors such as poverty, educational deficiencies, childhood maltreatment and adolescence trauma, amongst other things. Juridical criminals are those who lack self control, care or positive thinking, hence they usually violate the law in an impulsive act. Furthermore, those who are involved in crimes of passion are often provoked by love, jealousy, hatred or the need to seek vengeance, and they fail to control their emotions. Hysteric criminals engage in criminal activities through compulsive, neurotic or schizoid behaviours.

Like Lombroso, Garofalo also rejected the doctrine of free will and argued that crime can only be properly studied by use of scientific methodology (Jones, 2001: 117). He attempted to formulate a national definition of crime. According to Garofalo, definitions of crime should be enclosed in human nature; this means that a given act would be considered a crime if there is no society that tolerates it (natural). In order to qualify such an act, one must violate two basic moral sentiments which are pity (compassion and sympathy) and probity (integrity and honesty). These crimes are referred to as natural crimes. While other crimes are wrong because they have been made wrong by the law, natural crimes are evil in themselves. As Adler et al. (1994:64) puts it, “natural crimes are found in all human societies, regardless of the news of lawmakers and no civilized society can afford to disregard them”. Instead of making punishment fit the crime, Garofalo argued that punishment should rather fit the criminal because criminals have little control over their actions. Garofalo believed that his theory of punishment met three basic conditions that are necessary to make an effective instrument of public police: (i) it satisfied the deep-seated public demand for punishment of the offender simply because he committed a crime; (ii) its general principle of elimination was sufficiently intimidating to contribute to deterrence; and (iii) the social selection from its selection resulting from its operation offered hope for the future by the slow eradication of criminals and their progeny.

Ferri also dismissed the notion of free will as he believed that criminals could not be held morally responsible since they do not choose to commit crime but are rather driven by certain conditions in their lives to commit them. Ferri believed that crime is caused by factors which he classified as physical (race, climate, geographic location, seasonal effects, temperature), anthropological (age, sex, organic, psychological conditions) and social (density of the population, religion, organization of the government, economic and industrial conditions). He agreed that, with improved environmental conditions, crime can be reduced.

Like the classical school, the positivist school was also criticized. Carrabine et al. (2009:65) state that unlike the classical school, the positivist school often assumes that individuals are not responsible for their criminal actions and are forced into these by the environment that surrounds them. This, in turn, implies a total absence of free will and the ability to control one's actions. Choice and determinism are seen as part of the positivist school. This positivist school is characterized by undersocialisation. Through defining crime in relation to consensual values, the

extent to which universally accepted standards of behavior exist within the society remains questionable. In addition, the positivist school views crime as an activity which is primarily associated with the undersocialised and those at the lower end of the social scale. The positivist school also focused on the individual who committed the crime rather than the nature of the crime itself which could, in turn, lead to injustices if the penalty imposed on the criminal reflected his or her personal circumstances and not the severity of the offence (Joyce, 2009:14).

- **The sociological school of criminology**

Emerging in the 1920s, sociological criminology is based on the theory that adverse social conditions lead to criminal behavior (NCPI, 1986: 17). This approach is largely based on two theories: (i) the weakening of the family, ethnic and community traditions weakens the society's access to information that tackles criminal behavior; (ii) a state of social and economic deprivation causes people to create a criminal subculture. According to Naudé (1998: 7), sociological criminology rests upon functionalist and conflict approaches. In the functionalist approach, individuals become criminals because of defective socialization in respect of the norms and standards of the community. Alternatively, the functional approach rests on two basic promises: firstly, plural communities which are characterized by divergent systems of values supported by different groups and criminal law would normally reflect the values of the dominant social group; and, secondly, the state where crime is viewed as the manifestation of conflict between the power group (wealthy) and the suppressed (poor). Within this approach, in order to reduce crime, the socio-economic conditions which foster crime should be modified.

- **The contemporary school**

Unlike the sociological school, the contemporary school focuses on the environment of the potential victim rather than the environment of the criminal. While combining the features of some schools and rejecting others, the contemporary school also adds some new features in its effort to prevent crimes and not criminal careers. The theory of the contemporary school is based on the following:

- Criminologists should be more concerned with prevention and not rehabilitation
- No one knows exactly how to rehabilitate offenders

- Punishment or imprisonment can be effectively used to control certain offenders
- Criminal behavior can be controlled primarily through the direct modification of the environment of potential victims
- Crime control programs should focus on crime before it takes place, rather than afterwards
- By reducing criminal opportunities, the number of criminals will also be reduced (NCPI, 1986: 18).

According to the contemporary school, a new model of policing which tackles the crime before it is committed should be developed. Such models should include general and specific improvement of the physical and social environment and educating the potential victim in steps that they can take to avoid victimization.

2.10 APPROACHES TO SOLVING CRIME PROBLEMS

Although there have been various methods to reduce crime, many of them have not been successful. As a result, Conklin (1986:458) sets out three ideological approaches to solving the crime problem, i.e. the conservative approach, the liberal approach and the radical approach. Each of these approaches has its own set of general beliefs and assumptions about what causes crime and how it can be solved.

2.10.1 The conservative approach

In this approach, the status quo from criminals who are generally seen as challengers to the existing social order is preserved. Greater focus is placed on the cost of crime and the criminal justice system. Greater emphasis is placed on conventional crimes and less emphasis on crimes such as government corruption and white-collar crimes. Unlike other types of crimes, conventional crimes are attributed to the lower and working classes who are believed to be irresponsible or improperly socialized.

In this school of thought, factors such as a defective family structure lead to crime. In this approach the way to solve problems is through encouraging adherence to the legitimate directives of constituted authority. Improving family life, ensuring better discipline, self-control and harsher and more penalties, according to this approach, would be a way of dealing with the

crime problem. Apart from putting greater emphasis on deterrence, incapacitation and just deserts, conservatives also rely on the criminal justice system to impose certain severe, prompt and just penalties. Conservatives pay little attention to programmes that will strengthen the family or even teach better parenting skills because they are ideologically opposed to the intrusion of the government into the home, even those homes that produce criminals. According to conservatives, there should be a larger, more efficient and less restrained police force. In addition to the police force, there should be a higher conviction rate by the courts and longer sentences for imprisonment. In their quest to increase the chances of arrest, conviction and punishment, conservatives are often willing to sacrifice the rights of the defendants and those of the entire population.

2.10.2 The liberal approach

In terms of the liberal approach, it is believed that the problem of crime can be solved by developing policies that deal with its underlying causes. Within this approach, people are seen as the products of the social and economic system to which they belong. Such a social setup is often characterized by inequality of income and power as well as a lack of opportunities for certain groups which in turn increases the probability of crime, although liberals reject the idea that a full scale revocation is required. They do however believe that society can be reformed in ways that will reduce the crime rate. Like conservatives, liberals also focus on conventional crimes which they see as a lower class and working class phenomenon that develops as a result of poverty, discrimination and oppression. They believe that educational and vocational training, welfare assistance, job opportunities, antidiscrimination laws and community organization can lead to crime reduction. Liberals believe that only rehabilitation should be the primary function of criminal penalties. However, some liberals decided to shift from a theory of punishment that stresses just deserts to a greater degree as a result of the failure of many treatment programmes.

2.10.3 The radical approach

Unlike the other two approaches, in the radical approach, the focus is on crime by both the underprivileged and the privileged. According to the radicals, crime is evenly distributed amongst all classes of society, rather than what is suggested by official crime statistics. Radicals

believe that the differences in crime rates among various social groups are the result of the differential treatment of groups by the criminal justice system and not actual differences in criminal behavior. Selective crime reporting and recording, media attention and differential treatment by the criminal justice system are regarded as the source of the crime problem. Unlike the conservative and liberal approaches that focus on conventional crimes, the radical approach places greater emphasis on white-collar crime and political corruption (Conklin, 1986: 459). In this approach conventional criminals are viewed as victims of a capitalist system that offends the society. According to radicals, more attention should be placed on the social and economic system that defines certain acts as criminal and then pushes people into crime by failing to meet their standards, rather than on the criminal offender. Within the radical approach, even though there are crimes such as murder, rape and robbery that affect all classes, criminal law is viewed as a tool of the capitalist class. The radical approach fails to provide a proper solution to crime prevention rather than calling for the construction of a new and basically different social system. The existence of such a society remains the question.

2.11 PROBLEMS WITH IMPLEMENTING SUCCESSFUL CRIME PREVENTION PROGRAMMES

In order to implement successful crime prevention programmes, one should have adequate knowledge of criminal behavior and all the theories that surround it. However, such knowledge alone does not guarantee the success of any programme because of the difficulties of putting the theories to effective use. As Stratton and Terry (1968: 117) put it, “prevention programs are not implemented under controlled laboratory conditions where problems can always be anticipated and planned for, but are instead implemented in the complex and sometimes chaotic environment of the community where frustrating and disruptive contingencies are likely to arise”. In order to ensure the effective implementation of crime prevention programmes, one should anticipate difficulties that may interfere with the implementation of the program and have the ability to cope with such unanticipated problems when they develop. There are many problems that pose difficulties for prevention programs. However, Stratton and Terry (1968: 117) discussed a

number of general problem areas within which the majority of more specific problems are contained. They mentioned political issues, target population and program evaluation.

Political issues make it difficult to implement prevention programs. People who oppose attempts at manipulating human behavior based on their religious, ethical background, amongst others, create obstacles for prevention programs. Individuals whose co-operation would lead to the success of the program are often the ones who sometimes hamper the achievement of the program as a result of in-fighting for positions, resisting innovations in procedures and techniques, resisting surveillance by outside evaluators and by refusing to coordinate their services and activities with other programs. In addition, attempts to modify existing practices or introduce new practices often disrupt established routines and are often unwelcomed by tradition-oriented personnel. In order to ensure the success of prevention programmes, persons who are responsible for program administration should anticipate these kinds of problems and find the means to address them. Failure to do so will result in the loss of resources such as time, energy and money.

Even those who are to be recipients of the program (target population) must also be considered potential generators of the problems. Participants should be well-informed as to how much is expected from them. The benefits that will result from their participation in the program should be well-communicated to all the participants. Introducing prevention programs within the community can compel action by other agencies, organizations and groups which lead to changes that can impede as well as facilitate the achievement of the goals of the original program. In some instances the changes resulting from the original prevention program may be so much that the basic structure of the community or neighborhood changes. Hence, it is important to anticipate changes in the orientations, opinions and activities of individuals and organizations.

It may also be difficult to evaluate the impact of the prevention program. It becomes problematic to evaluate programs because of the strong resistance from those who implement them with regard to objective, independent scrutinizing of their methods and orientation. Traditionally, those in the helping disciplines have not generally encouraged outside assessment of their claims of producing successful results (Stratton & Terry, 1968: 118). Administrators often find it difficult to deal with the reaction if the program fails to accomplish its publically stated goals. As

a result, they tend to shift the blame to erroneous theories, facility techniques or the lack of resources, all of which are not likely to be successful in alleviating their demands for positive results.

2.12 THE CONCEPT OF PUNISHMENT

Definitions of punishment vary from one author to the next. As Adams (1998: 3) puts it, “the concept of punishment is as problematic as its uses and abuses are controversial”. In simple terms, punishment can be described as the infliction of pain on a person as a penalty for a violation, fault or violence. Schichor (2006: 9) defined punishment as a societal reaction to an act that is regarded as harmful to the entire society. Greenwalt (1983: 343) defined criminal punishment as follows: “persons who possess authority impose designed unpleasant consequences upon and express their condemnation of other persons who are capable of choice and which have breached established standards of behavior”. Boonin (2008: 4), however, stated that a good definition of punishment should be able to provide a set of necessary and sufficient conditions that clearly distinguish the cases of punishment and the cases of something else. The results produced by such distinction must cohere sufficiently well with what punishment means when it is argued about it and must do so over a sufficiently wide range of cases. For example, if it is clear that responding to an offender’s behavior by fining, beating or executing him or her does not count as punishment, then an adequate definition of punishment must account for such judgments. However, in this regard, the claim that an adequate definition must accurately capture actual use of the term ‘punishment’ does not mean that in order to use such a definition, a defender of the permissibility of punishment must defend the permissibility of all forms of punishment. It simply means that a defender of punishment must acknowledge that, for example, capital punishment is a form of punishment but it does not mean that he or she must insist that it is morally permissible. If it remains unclear or undetermined whether responses such as public shaming or supervised probation should count as punishment, then a good definition of punishment should be able to help make sense of these facts as well.

Secondly, a good definition of punishment must be illuminating. Even though a good definition may be accurate, by successfully distinguishing between cases of punishment and cases of something else, it will be unacceptably ad hoc if such distinction is made only because it

contains various stipulations that are thrown in solely to produce the desired results and have no further motivation. A good definition should be able to provide a correct answer when it is enquired, whether or not a particular act counts as an act of punishment, although it will do nothing to indicate why the answer is correct. In a nutshell, a good definition of punishment gets at the essence of what is defined and does not just tell that a given subject belongs to a certain class with certain other subjects but in virtue of what fact or set of facts this is so. A good definition of punishment should also be neutral in determining whether or not punishment is morally permissible. A definition of punishment will be unacceptable if it begs the question, one way or the other, with respect to either the merits of punishment in general or the merits of any kind of justification of punishment in particular. For example, if one attempts to distinguish between punishment and private vengeance by simply saying that punishment is authorized and private vengeance is not and if part of what one meant by an act being authorized was that it was legitimate, then the resulting definition of punishment would unacceptably beg the question in favour of the claim that punishment is morally permissible (Boonin, 2008: 5). If one defined punishment in a manner that part of what made an act punishment is that it was justified because of its effects on society or that it was not justified in this manner, then the results would fail to be neutral with respect to the various competing solutions to the problem of punishment. A good definition of punishment should then respect and reflect both the beliefs about what counts as punishment and the puzzlement over what renders it to be morally permissible for the state to punish people.

Both Duffee (1989: 8) and Newman (1985: 7) agree that the definition of punishment has five important elements:

- It must involve pain or other consequences that are normally considered unpleasant
- It must be for an offense against a rule
- It must be imposed on the person responsible for the behavior
- It must be administered intentionally by human beings other than the offender
- It must be imposed by only those who have legal authority over the offender and for the implementation of the law or the standard in question.

Nevertheless, Bagaric (2001: 38) states that in order to avoid definitional bias, a minimalist definition of punishment which is as clear as possible and makes clear any assumptions that are incorporated within it should be adopted. Such definition should come down to the view that ‘punishment is a hardship or deprivation, the taking away of something of value for a wrong actually or perceived to have been committed’.

2.13 PUNISHMENT AND ITS THEORIES

Unlike civil law which focuses on compelling a person to compensate an individual victim for any damage suffered, criminal law uses punishment as a means of controlling the behavior of citizens (Bacigal, 2002: 12). The forms of punishment that are utilized by the criminal justice system are designed to control behaviours in a variety of ways. Theories of punishment represent the basis of legitimation for the state’s criminal punishment procedures. Different theories of punishment explain in different legal philosophical and legal theoretical ways the nature of punishment and, via the objectives of punishment, the goals of the state’s interference in criminal law (Sootak, 2000: 68). The theories of punishment belong to one of two groups, i.e. the absolute theory or retributive theory which justifies punishment on the grounds that it is deserved and the relative theories or utilitarian theories which justify punishment on the grounds that it is socially beneficial as well as the combination of absolute theory and relative theories known as unitary theory. According to Snyman (1995: 18), just by reflecting on the theories of punishment one gains a better insight not only into the type or scope of punishment which ought to be imposed but also into some of the fundamental principles of criminal liability such as criminal responsibility and culpability.

Furthermore, Snyman (1995: 18) states that a distinction can be made between the absolute theory and the relative theories of punishment. While there is only one absolute theory, which is retributive theory, there are a number of relative theories. Within absolute theory punishment is an end in itself while within relative theories, punishment is only a means to a secondary end or purpose. The secondary purpose within relative theories differs from one theory to the other and it can be preventive, deterrent or reformative. In preventive theory, the purpose is to prevent crime; in deterrent theory, the purpose is to deter the individual or society at large from committing the crime; and in the reformative theory, the purpose is to reform the criminal.

However, in absolute theory one only looks at the events of the past while in relative theories one only looks at the events of the future.

2.13.1 Retributive theory

As indicated above, retributive theory regards punishment as being justified by an event in the past. It is based on the principle that wrongdoers should be punished because they deserve it (Cavadino & Dignan, 1992: 38). The theory of retribution is based on the principle that by committing a crime, the offender disturbs the balance of the legal order which can only be restored if he or she is punished for the crime. In retribution, punishment is imposed because it has been deserved through the commission of the crime. According to Snyman (1995: 19), not only is the offender reconciled with the legal order by undergoing punishment but retribution is also seen as a reflection of the community's condemnation of the crime. If the offender is not punished, he or she may commit further crimes which may in turn have serious consequences that members of the community, especially those immediately affected by the crimes, may take the law into their own hands in order to avenge. It is the duty of the state to prevent individuals from taking personal revenge.

According to Rabie & Strauss (1981: 21), the retributive theory has two sides. Firstly, if viewed from the angle of the community, retribution amounts to emphatic denunciation of the offender and his or her crime and the infliction of pain upon the offender to the degree which he or she deserves. Within retribution, because punishment is deserved, it should reflect the concept of proportion. There are two different proportions that are involved, i.e. a proportion between the punishment and the offender's moral blameworthiness and between the punishment and the harm that the offender has caused to the society. Since it is required that justice be done towards the offender, it is of great importance that retribution necessitates some kind of proportion between punishment and the seriousness of the offense committed. Secondly, if it is viewed from the individual offender's angle, retribution leads to the atonement of the offender's crime through the punishment that is imposed. Through the offender's suffering it is believed that he or she has paid his/her debt to society.

There are four key elements that can be identified in modern retributivism (Marshall, 2001: 109). Firstly, retribution presupposes moral guilt. Offenders are regarded as morally responsible agents who incur legal guilt that must be dealt with if they voluntarily break the law. Secondly, retribution is related to the concept of desert. When punishing the offender, the only reason must be that it is deserved and would be unjust not to punish. Those who break the law deserve to be punished for their actions whether or not the punitive suffering produces any desirable consequences. Thirdly, there is the matter of proportionality. For punishment to be just, it must be commensurate with the offence committed; the penalty imposed should also be proportionate to the harm done. Fourthly, there is reprobation or denunciation. Punishment is imposed to set the boundaries of acceptable behaviors. It indicates what the society can accept and what it cannot accept.

According to the retributive theory, punishment is justified because a crime was committed. Retributive theory can also be referred to as the justice theory because, through retribution, the injustice that has been brought about by the commission of a crime is said to be wiped out by the imposition of an equivalent evil upon the offender. The retributive theory focuses on the criminal as an individual not the betterment of a wider society, unlike the deterrence theory. As Marshall (2001: 111) states: “it rightly recognizes that wrongdoing entails personal choice and moral responsibility. Punishment is justified only if it is just, it is just only if it is deserved, and it is deserved only if the crime is the result of free will”. Within this theory, society is assured that whether or not they are punished depends entirely on their own actions and choices and no innocent individuals will be punished. If applied carefully and correctly the retributive concepts of just deserts and proportionate punishment can help eliminate vindictiveness, cruelty and bias based on race, class or gender in punishment.

2.13.2 Relative theories

Punishment within the relative theories is justified on account of its utilitarian function (Rabie & Strauss, 1981: 25). Unlike absolute theories, relative theories are future oriented and punishment is supposed to prevent future crimes. Watson & Arp (2011: 237) state that the utilitarian theory of punishment follows directly from the utilitarian theory of morality. If the action reduces overall pain and increases overall happiness, such an action is moral. Therefore, punishment

within the utilitarian theory is justified only insofar as it brings about better consequences for society than if there were no punishment. Gerber & McAnany (1972: 3) explained morality in the utilitarian context as “the achieving of a measurable social goal at a cost which is not incommensurate with its value for society. Punishment is moral if it achieves the prevention of crimes at a price which is not too dear in terms of the pain it inflicts on the offender and the society at large”. Whether or not the utilitarian theory of punishment is true depends on the truth of at least three other claims: (i) the utilitarian theory of morality is true, (ii) crime decreases overall happiness, and (iii) traditional punishment such as fines and imprisonment successfully prevent crime. If any of these claims is false, the utilitarian theory of punishment is false. In addition, if it turns out that a particular punishment is no longer a successful deterrent of crime and the overall pains involved outweigh the overall goods then such penalty is not a permissible punishment.

In terms of relative theories, punishment is justified by the value of its consequences, namely, prevention of crimes, and crimes are to be prevented in order to protect the society. The main aim in these theories is to ensure that offenders become law-abiding and that non-offenders should remain law-abiding. There are three types of utilitarian or relative theories, i.e. preventive, deterrent and reformatory theories. These theories of prevention suggest that punishment fulfils the task of crime prevention by incapacitating the offender, by deterring him or her from committing new crimes or by rehabilitating him or her.

2.13.2.1 Preventive theory

The purpose of punishment within the preventive theory is the prevention of crime. Prevention has two aspects, namely, general prevention and individual prevention or incapacitation (Soma, 1982: 97). While general prevention is the inherent ability of the criminal law to prevent criminal activities, individual prevention embraces incapacitative measures calculated to prevent the individual offender from committing further criminal activities.

(a) General prevention

General prevention, as an aim of punishment, is regarded as justified because it is aimed at discouraging people in general from committing crimes. As a result people are thus restrained

from committing crimes by the threat of punishment rather than the imposition of punishment. The most important facets of general prevention are that the threat and imposition of punishment fulfills a deterrent function, socializing function, habituating function, informative function and morale sustaining function.

- **General prevention and the deterrent function**

General deterrence is the classical aim underlying the theory of general prevention. In general deterrence, a potential offender is deterred from the commission of a punishable act by the conscious fear of punishment. The underlying idea is that people refrain from criminal activities because they know unpleasant consequences of punishment follow the commission of crime. However, one should bear in mind that the success of general deterrence is to a larger degree dependent upon the effective promulgation of the threat of punishment and of punishment which is in fact imposed because, in this respect, it is publicity and not punishment which deters. General prevention is more concerned with the psychology of law obedience than of law violation. It does not view the criminal law merely as a system of compulsion based upon fear of conformity but rather draws attention to the ability of criminal law and its enforcement to make citizens law-abiding.

- **General prevention and the socializing function**

One of the most important facets of general prevention is that the threat of punishment fulfils an educative, socializing and moralizing function. Punishment is seen as a concrete expression of society's disapproval of the act and this in turn helps to form and strengthen the public's moral code. The concept of morality implies respect for and internalization of values cherished by the society. Individuals internalize the norms expressed by the law through the process of socialization (Soma, 1982: 98). Criminal sanctions assist the socialization process by which individuals acquire knowledge of and respect for norms. Killinger & Cromwell (1978: 30) are of the opinion that the degree to which norms are accepted by the society depends to a large extent on the vividness with which coercive threats are made. Because punishment contains a moral element which finds expression in disapproval and condemnation of criminal acts, those who have sufficiently internalized the norms of the criminal law feel guilty about violating norms.

However, if the norms are violated then punishment serves as an instrument of moral education to clarify the moral principle underlying the infringement and re-asserting it emphatically.

- **General prevention and the habituating function**

It is possible to inspire unconscious inhibitions against crime commission without appealing to the individuals' moral concepts. The criminal law stimulates the habit of law-abiding conduct and penalties for non-conformity. As Soma (1982: 99) comments, “purely as a matter of habit, with the aid of fear, respect for authority or social limitation, it is possible for the law to create unconscious inhibitions against criminal conduct and to establish a condition of habitual lawfulness”. As a result, illegal actions will not present themselves consciously as real alternatives to conformity, even in situations where the potential criminal would run no risk whatsoever of being caught. In this regard, Packer (1968: 43) concluded that “every one of us is confronted daily by situations in which criminal behavior is a possible alternative. Sometimes the presentation is sufficiently vivid that we think about it and reject the criminal alternative. More frequently and more significantly, we automatically and without conscious cognition follow a pattern of learned behavior that excludes the criminal alternative without our even thinking about it”.

- **General prevention and the informative function**

The general prevention effect of the criminal sanction can also be seen in the role of criminal law as an informer of the limits of legitimate and acceptable behavior (Rabie & Strauss, 1981: 44). The threat of punishment should not only be communicated with potential criminals with a view of deterrence but also law-abiding citizens in general require orientation as to what conduct would expose them to punishment so that they can continue with their legitimate behavior. It is required that criminal provisions are clearly formulated. .

- **General prevention and the morale sustaining function**

Rules of conduct are unlikely to be followed unless they are reinforced by a sanction. Thus, the threat of punishment is added to criminal provisions to provide persuasion for persons to comply with these provisions. Many citizens are successfully persuaded to comply merely by the threat of punishment. However, there will always be those who need to be persuaded through their own experiences and, as regards persons who fail to heed the threat of punishment and who accordingly commit crimes, it is necessary that punishment is imposed. Such punishment does not only have a special preventive effect on the offender but it is also of great importance in relation to citizens who are generally law-abiding but who may become demoralized and consequently discontinue their law-abiding behaviour because they see offenders getting away unpunished. The effectiveness of punishment as a morale sustaining mechanism is heavily dependent upon the effecting enforcement of the criminal law (Rabie & Strauss, 1981: 45).

(b) Individual prevention or incapacitation

Individual prevention is aimed at offenders who have already been convicted of crimes. The main idea is that the offender should be prevented from repeating his or her criminal behavior, be it through incapacitation or intimidation by the threat of punishment or through his or her rehabilitation. The most simple way in which an offender can be prevented from repeating his or her crime is to render him or her permanently to temporarily incapable of doing so. The efficacy of incapacitation in protecting the public from offenders who have been identified and convicted cannot be denied. As Walker (1991: 34) puts it, “by punishing an offender to imprisonment, the offender is incapable of committing crimes during the period of imprisonment”. Incapacitation is more cynical than deterrence and rehabilitation, which in their different ways assume that offenders’ behavior can be changed. The idea of incapacitation is usually applied to offenders who are deemed dangerous and pursued through predicting offenders’ likelihood of reconviction and incapacitating those assessed as more likely to re-offend (Rex, 2003: 39).

2.13.2.2 Deterrent theory

The theory of deterrence is based on the idea that the incidence of crime will be reduced because of people’s fear or apprehension of the punishment they may receive if they offend (Cavadino & Dignan, 1992: 33). Deterrence regards punishment not as an end in itself but as a means to an

end; the end being the prevention of the crime which actual or threatened punishment presumably achieves. An important distinction should be made between individual deterrence and general deterrence. Individual deterrence is aimed at deterring an individual from the commission of further crimes while general deterrence seeks to deter the entire community from committing crimes. A full discussion on the theory of deterrence will be provided in Chapter 4.

2.13.2.3 Reformatory theory

The reformatory theory is of recent origin and posits that the purpose of punishment is to reform the offender as a person so that he or she may become a normal law-abiding citizen once again (Snyman, 1995: 23). In this theory, the aim of preventing crime is pursued by changing offenders' social circumstances or their attitudes and behavior. As La Fave & Scott (1986: 24) states: "the theory rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified and that on this basis therapeutic measures can be employed to effect positive changes in the behavior of the person subject to such treatment". Unlike in other theories where emphasis is placed on the crime itself, the harm caused or the deterrent effect which punishment may have but on the person and personality of the offender, within the reformatory theory the person commits crime because of some personality defect or because of psychological factors in his or her background such as an unhappy or broken parental home or other undesirable influences. The most important feature of this theory is that it recognizes that an offender does not stop being a member of the community while in corrections. The offender's interests are part of society's interests and it is everyone's interest that he or she is rid of the behavior that injures the community to which he or she belongs.

Reformation is really procured through punishment if the offender accepts his or her punishment as just and deserved and amends himself or herself accordingly. Reformation through punishment has the following factors:

- The offender must display the potential for moral improvement
- The offender must realize that what he or she has done is wrong and accept his or her punishment as the logical consequence of his or her wrongdoing

- The punishment must be justified in terms of rules for which the offender has respect (Moberly, 1968: 133).

Forms of punishment that are aimed at rehabilitation are, amongst others: periodical imprisonment, imprisonment for corrective training, community service orders and especially committal to rehabilitation centers. A full discussion on the process of rehabilitation will be provided in Chapter 3.

2.13.3 The unitary theory

Considerable criticism has been leveled against the retributive theory and the theories of prevention have also led to unacceptable results. As a result, attempts have been made to integrate these different theories into a single theory known as unitary theory. Because retributive theory is indispensable it is thus taken as the basis in order to ensure that justice is done and the principle of proportionality between punishment and the gravity of the offence is applied, in order to prevent the aims promulgated by the supporters of preventive theories from violating principles of justice as regards the offender. All the theories are reconcilable in the following, at a general level: it is precisely the exaction of retribution for a crime which deters both the offender and the community from committing crime and thus also prevents crime. In other words, retribution is one of the best ways of deterring people from committing crime (Snyman, 1995: 25).

In *S v Zinn 1969 2 SA 537 (A)*, the crime, the offender and the interests of the society were identified as three main considerations to be taken into account when the sentence is imposed. By ‘crime’ is meant especially the consideration that regard must be given to the degree of harm or the seriousness of the offence (retributive theory), by ‘the offender’ is meant especially that regard must be given to the personal circumstances of the offender such as personal reasons for committing crimes and his or her prospects of one day becoming a law-abiding citizen (reformatory theory) and by ‘interest of the society’ is meant either that the society must be protected from dangerous criminals (preventive theory) or that the society must be deterred from crime (general deterrence) or that the righteous indignation of society at the contravention of the law must find some expression (retributive theory). A balance should be maintained between the

three factors and the court cannot emphasize any of them at the expense of the others. However, because each case is unique and each accused differs from all others, it is difficult to combine the factors in a particular way with specific weight allotted to each factor beforehand and then use this as a rigid formula in all cases. Therefore, emphasis should be placed on the individualization of sentences and the uniformity of sentences should be ensured where the relevant circumstances in cases resemble each other.

2.14 ASSUMPTIONS ABOUT PUNISHMENT

2.14.1 Society is a single group with one set of rules

The most important beliefs which underlie criminal punishment is that a society is a simple social system, which like a group, has a leader at the core and followers displaying varying degrees of loyalty and conformity to a single set of rules (Duffee, 1989: 62). Regardless of the size and heterogeneity of the population, it is believed that if members of all social systems share the same values, then social control practices should have the same effects in any size system. According to this belief, formal social controls such as criminal punishments operate in the same way as informal controls. Within a society, if anyone had the same values and followed the same norms, all members of the society would respond to punishments in the same way as negative sanctions would reinforce the norms of the group and reduce deviance, since all members would have a membership in that group.

2.14.2 Deviance of characteristic of individuals

In this assumption, deviance is explained by characteristics of a particular individual which in turn makes it difficult for that individual to follow the norms of the group. The belief is that not all members of a group will follow the norms in the same manner; while some who are leaders will from time to time be judged by the group to have made mistakes. Such mistakes are believed to have been caused by deficiencies in individual members of the group and not by the problems in the social system itself. If deviance is an individual problem, social controls should keep most members in line most of the time, by correcting individual faults and reinforcing individual

commitment to group norms. Group social controls can be incapacitative, rehabilitative, retributive or deterrent (Duffee, 1989: 62). While incapacitation and rehabilitation can work on the individual rule breaker, retribution and deterrence operate on other members of the group rather than the individual law breaker. It is believed that crime is a problem of individuals and can therefore be controlled just like deviance in a small group. If an individual commits a crime, his or her punishment will reinforce the rules to which everyone subscribes and the lawbreaker will adopt behaviours favoured by the group.

2.14.3 Criminal punishment keeps society together

In this assumption, the focus is on the value of criminal punishment rather than the nature of the group or the source of deviance. It is believed that criminal punishment represents the will of all the people in the group and, in turn, benefits the whole group rather than specific individuals (Duffee, 1989: 63). The government is assumed to be representative of and operating for the society in which that government operates. However, it should be noted that this assumption does not imply that all members of the society benefit equally from the operation of the society. It does however imply that all members of the society have an opportunity to benefit to such an extent allowed by their individual skills, abilities and backgrounds. This implies that while life may be more pleasant and rewarding for some as opposed to others, criminal punishment ensures that the degree of unpleasantness is distributed naturally on the basis of individual differences, rather than unnaturally on the basis of deviant acts.

2.15 IDEOLOGIES OF PUNISHMENT

An ideology can perpetuate itself and the action it justifies, whether or not the beliefs about the society are accurate. According to Miller and Coates (1977), an ideology is extremely difficult to change since it contains its prescriptions about what should be done in times of trouble. While ideologies which are based on inaccurate beliefs produce disorder, they reinforce the existing control strategy, rather than change it. There are two main types of ideologies, i.e. dominant ideologies and critical ideologies. Dominant ideologies comprise of the three assumptions about

punishment which were discussed in the previous section. Critical ideologies comprise of the Marxist, anarchist and conflicted systems (Duffee, 1989: 64).

2.15.1 The dominant ideology

As indicated, the three assumptions about punishment - society is a single group with one set of values, deviance is characteristic of individuals and criminal punishment keeps society together – form the basis of dominant ideology. The dominant ideology contains a number of variations on these basic themes which differ primarily in the choices for implementing formal control most efficiently. For example, the four most common justifications of punishment, i.e. retribution, deterrence, incapacitation and rehabilitation, can be understood as four different approaches to the design of criminal punishment (Duffee, 1989: 64).

The retributive design stresses the maintenance of values and norms and downplays concerns for changing behavior. The utilitarian design stresses control of behavior and the use of retributive concerns about fairness and appropriateness only to place limits on the choice of controls. Both the retributive and deterrent designs place greater emphasis on the impact of punishment on persons not being punished at the moment, while both incapacitation and rehabilitation emphasize the punitive impact on the individual offender. The rehabilitation design seeks to deal with factors that lead to personal deficiencies while the other three designs implement punishment which reduces the negative impact of those personal deficiencies on other people. These choices amongst punishment techniques can be accompanied by acrimonious debate and major struggles for political control of the punishment system.

2.15.2 Critical ideologies

Critical ideologies challenge the basic beliefs of the dominant punishment ideology because their interpretation of punishment leads to criticism of the entire political control system.

- **The Marxist ideologies:** Because Marx had little to say about criminal justice and criminal punishment, the Marxist ideology is difficult. In attempting to elaborate upon Marxist ideology, one faces two challenges. Firstly, one needs to update Marx to include certain problems Marx did not address and, secondly, one must proceed to an application of the

updated principles directly to the operation of criminal justice. The Marxist ideology rejects all three assumptions of the dominant punishment ideology. Firstly, according to the Marxian interpretation of punishment, a capitalist society is not seen as a single group with a single set of norms but rather as a system which comprises of two classes which are capital and labour. Capitalists control labour because they control the means of production and have an exploitive, coercive relationship with the working class which sustains itself by selling its labour (Duffee, 1989: 66).

Secondly, Marxists generally believe that crime is caused by class conflict. Marxists argue that criminal law preserves the property rights which protect the capitalist system: “the enforcement of the law systematically excludes labour from control of its own future” (Duffee, 1989: 66). Because of poverty, individuals are pressed to compete for survival in a number of ways which includes victimizing others for economic gain. Although Marxists might agree that specific acts of deviance stem from individual problems, but according to Marxists, class conflict is the source of those individual problems.

Thirdly, rather than viewing the punishment system as an instrument that benefits the entire societal group, Marxists view it as benefiting the interests of the controlling class. In addition, Marxists are of the opinion that the visible attempts, in the capitalist system, to deliver fair criminal justice might come with a number of injustices (Duffee, 1989: 66). Although due process and offenders’ rights movement may prevent the state from committing such injustices, such actions strengthen the message that crime is an individual problem.

The Marxian position on punishment may view criminal activity as political results even though it does not interpret typical street crime as being politically motivated or morally inexcusable. Nevertheless, Marxists interpret criminal activity as the behavior of those individuals who are politically uninformed and are only interested in themselves. According to the Marxist, the dominant punishment ideology operates to perpetuate both crime and criminal identities as a means of keeping the lower class disorganized and victimized. Even though Marxists would argue that the current society may not have the right to dispense

retributive justice since it is not a community of responsible individuals, they however favour retribution over utilitarian justifications of punishment.

- **The anarchist ideology:** There are many similarities between the Marxist ideology and the anarchist ideology especially when it comes to the issue of capitalism. However, the anarchists differ with the Marxists on solutions to social conflict and they oppose all complex social structures rather than only capitalist structures. Anarchists are of the opinion that complex formal organizations are fundamentally destructive of natural human inclinations towards cooperation and mutual aid. The class distinctions which the Marxists trace to the ownership of the means of production, the anarchists trace to the differential distribution of power. A conflict arises between managers and the managed. Differences in all aspects of life push individuals towards narrow specialization and dependence upon organizational rules for governing their interactions with each other. As a result, people become alienated from each other and are unable to cooperate (Duffee, 1989: 67).

In reacting to the three assumptions of the dominant punishment ideology systems, the anarchist first states that modern society is not a simple system in which all belong to the same group and subscribe to the same norms. Modern society, according to the anarchist, is comprised of conflicting groups which are separated by formal roles which are also differentiated by power. Secondly, according to the anarchist, deviance has its source in the inability of human beings to conform to the simple and narrow roles assigned to people in the world of complex organizations. Thirdly, a system of punishment is a means of preserving strong social structures by forcing criminals to conform to the rules of competition and specialization. Within the anarchist ideology, any form of punishment cannot be accepted as satisfactory, it argues instead for a communal settlement of disputes and differences without resorting to roles or labels of victims and offenders (Duffee, 1989: 67).

- **The conflicted system ideology:** It is derived from general systems theory rather than from a politically motivated belief, hence, some people may refer to it as a theory rather than an ideology. The basic assumptions of the conflicted systems ideology form a set of interlocking beliefs. Within this ideology, a difference between deviance and control in small groups and deviance and control in large groups in complex societies is emphasized. While informal

control involves the application of informal group standards of behavior within a small group, formal control involves the application of written rules by state officials on a large group in the society. Formal controls are operated by complex organizations which have the responsibility for the problems of human beings. The responsibility for controlling deviance is shared among different agencies which may include the criminal justice system, welfare organizations, juvenile justice system, and mental health systems amongst others. None of the officials in any of the systems has the resources to deal with the whole individual; hence, while one deals with crime, for example, another will deal with mental anguish and confusion. The situation is different in informal control groups where attempts are made by the whole group to deal with the individual as a whole. In this approach, the control response reevaluates the deviant behavior in terms of the underlying difficulties and attempts to deal with the causes of deviant behavior. Because the responsibilities within formal controls are shared amongst different agencies, complex societies that rely on formal controls might have difficulty in matching relevant actions with control responses. This leads to further complications because there can be a difference from one level of agency to the next in the interpretation of agency jurisdiction and the definition of the behavior to be controlled. Because organizations rely on rules rather than controlling deviant behaviours, there is often a difference between control agency policy and the behavior of the agents on the frontline (Duffee, 1989: 68).

Like the Marxist and the anarchist ideology, the conflicted systems ideology also rejects all three assumptions of the dominant ideology: (i) according to the conflicted system the society is made up of many groups in varying degrees of conflict be it about abstract values or about implementation decisions, (ii) although deviance has both individual and social sources, formal control agencies not only fail to deal with an individual's problem but also fail to recognize the system sources of deviance such as deviance amongst groups, and (iii) there is no similarity between the operation of the formal control systems and the informal control systems rather it is a complex system that consists of specialists who in turn fails to deal with deviant behavior. The conflicted system ideology does not see any benefit in formal control systems since they were not designed to control deviance in a complex society.

2.16 THE MEANING OF SENTENCING

There is no statutory definition of sentencing which is applied generally (Wasik, 1993:6). Champion (2008: 2) defined sentencing as the imposition of punishment on the criminal offender after conviction by judges. After finding the criminal guilty of a crime, either through a jury's verdict or a judge's decision or his or her own admission of guilt, the state has the right to impose a criminal sanction and, according to Senna and Siegel (1998: 375), the process in which the nature and the extent of punishment for such convicted offender is decided upon is referred to as sentencing. Sentencing remains the responsibility of the judges. The judge's decision will in effect close the trial which began with the commission of the crime (Manaugh, 2002: 33). Judges have discretion to select the type, length and sometimes certain conditions of sentence (Newman & Anderson, 1989: 383). There are various types of sentencing options that are available to the judges and they include probation, fines, community sentences and incarceration.

2.17 GOALS OF SENTENCING

Sentencing is the most important function of the criminal justice system. The following are the most important goals of sentencing (Champion, 2008: 2):

- Promote respect for the law: Through sentencing the offender, judges are sending a strong message to the criminal community. However, if the sentence is too lenient, then the criminal community might think that offenders will not be punished harshly and therefore engage in further criminal conduct. By imposing sentences that are proportionate to the crimes committed, judges are promoting the respect of the law. The message to the criminal community is that if the law is violated, those who violate it will be punished. In that manner the law will be respected and those who want to offend would be deterred.
- Reflect the seriousness of the offense: One of the objectives of criminal sentencing is to match the sentence with the seriousness of the offense. If the offense is too serious then the punishment should be harsh. Hence, violent criminals are usually punished more severely than property offenders because violent crimes result in serious bodily harm or death unlike property crimes where the property can be replaced. Thus, punishment should be proportional to the seriousness of the crime.

- Provide just punishment for the offense: There has been a shift in many states in sentencing policies to reflect the justice model which is a legitimization of the power of the state to administer sanctions. Within the justice model, punishment is viewed as the primary objective of sentencing, the abolition of parole, the abandonment of rehabilitative ideal and determinate sentencing.
- Deter the offender from future criminal conduct: By imposing punishment that fits the crime, offenders will be prevented from committing future criminal activities. As offenders re-offend, their sentence length increases, even if the same offense is repeated in later separate crimes.
- Protect the public from convicted offender: through offender incarceration the public is guaranteed that they will not come into contact with the criminal offender. If offenders receive longer sentences, it simply means that the society will not be victim for a longer period. There is a belief within the public that all offenders should be locked up for some period of time in order to shelter a vulnerable public from them.
- Provide rehabilitative opportunities to the offender: Rehabilitation, as one of the goals of sentencing, is based on the notion that convicted offenders should be reformed while incarcerated. Offenders should not be warehoused but should rather be provided with educational and vocational programmes for them to lead a law-abiding life after their release.

2.18 IMPOSITION OF THE OFFENDER'S SENTENCE

As indicated in the previous section, judges have the responsibility to impose a sentence on the criminal offender. The sentencing decision is primarily based on the information available to the judge. Some judges allow victims to make impact statements in order to make decisions while others consider pre-sentence reports in order to come to a decision. The pre-sentence report involves evaluating the offender's personal and social history as well as his or her chances of rehabilitation within the community (Senna & Siegel, 1998: 340). While some judges may value pre-sentence reports, others may dismiss these completely.

If the accused is convicted for two or more charges he or she will be sentenced on each charge which will run concurrently. Such sentences begin the same day and are completed when the longest term has been served. In contrast, if the offender receives a consecutive sentence, he or

she must first complete the sentence for one crime and then begin serving the sentence for the second offence. While concurrent sentences are the norm, consecutive sentences are imposed on most serious criminals who are not willing to co-operate with the authority. There are varieties of sentencing structures that are used. Champion (2008: 6) stated that most jurisdictions use the following types of sentencing structures, i.e. indeterminate sentencing, determinate sentencing, presumptive sentencing or sentencing guidelines and mandatory sentencing.

2.18.1 Indeterminate sentencing

The indeterminate sentencing, which is tailored to fit individual needs, has been the most frequently used form of sentencing for many decades. Within indeterminate sentencing a judge imposes a sentence to imprisonment for a range of time falling within parameters set by the legislatures (Branham & Krantz, 1994: 84). For example, a judge might sentence an offender to imprisonment for robbery to one to ten years or not more than five years; the parole board will then decide how much time the offender should serve based on those time intervals. In the one to ten year sentence, the parole board may release an offender after serving two years or may decide that the person should serve the full ten years. For an offender to be released early, he or she must show good behaviour and failure to do so will only lead to late release or ultimately serving of full sentence and then be released.

According to Adler et al. (1994: 355), although indeterminate sentences may accommodate goals of retribution, deterrence and incapacitation, their basic purpose is to individualize each sentence in order to ensure the rehabilitation of the offender. It provides flexibility for the offender to show to the correctional agencies that he or she has been rehabilitated and it might authorize the release. Senna and Siegel (1987: 388) mentioned possible variations on indeterminate sentences:

- It is up to the legislature to determine the minimum and maximum sentence and the judge cannot change it. For example, each murderer should be sentenced to imprisonment between 15 – 25 years.
- While the legislature determines the maximum sentence which cannot be changed, the judge determines the minimum sentence. For example, offender A receives 15 – 25 years for

murder, offender B receives 18 – 25 years for murder and offender C receives 20 – 25 years and so on.

- The judge sets both the maximum and the minimum sentence based on the parameters set by the legislature. For example, in a situation where the guidelines state that the maximum sentence for murder should be 25 and minimum be 15, offender A can get 15 – 20, offender B can get 20 – 25 and offender C can get 17 – 23. As long as the maximum is not exceeded and the minimum is considered.
- While the maximum is set by the judge within an upper limit, the minimum on the other side is determined by the legislature. For example, all sentenced murderers should at least serve 15 years but not more than 25 years. Offender A can serve 15 – 20, offender B can serve 15 – 22 years and offender C can serve 15 – 24 years.

Indeterminate sentencing has an advantage of individualized sentencing on the basis of the offender's background, the circumstances surrounding the criminal offence and the offender's behavior while incarcerated. Indeterminate sentencing is viewed in relation to the individual inmate based on his or her criminal act. Within this form of sentencing, rehabilitation, probation and parole are viewed as plausible and preferred forms of crime control. Based on the advice of correctional officials who deal directly with the offender, the parole board can best determine when the offender is ready to be released to the community. In addition, the parole system makes it easier to deal with overcrowding as it releases offenders on parole in order to ease the population pressures.

However, indeterminate sentences have been subjected to heavy criticisms for a variety of reasons. With indeterminate sentencing, the decision for release is up to the parole boards. This in turn means that sentences were really not given by the judges but by parole boards. Such a shift in authority can lead to enormous disparities. An example of this can be in a situation where the parole board decides to release an offender after serving 11 years and another after serving 20 years. Since they only govern decisions concerning when the offender should be released, the parole guidelines cannot totally eliminate the disparity that comes with indeterminate sentencing. The uncertainty of the offender as to when they are going to be released can cause stress and tension which in turn impacts on their prospects for rehabilitation (Goodstein & Hepburn, 1985: 18). In this approach, inmates have to wait until the parole board reaches a positive decision for

them to know when they are going to be released. As Branham and Krantz (1994: 85) comment: “stress and tension may also be accompanied by resentment as inmates observe other inmates whom they believe to be comparable to themselves being released on parole while they are left to languish in prison”.

Moreover, within the indeterminate sentencing model, an offender should be released at the specific point in time that he or she, according to the parole board, has acquired the necessary skills to succeed in the community. Keeping an offender incarcerated for too long is assumed to show that the offender has not acquired the necessary skills. As a result, offenders may participate in treatment programmes in order to satisfy the demands of the parole board because there is a link between participation in treatment programmes and parole release (Goodstein & Hepburn, 1985: 20). In addition, individualized sentences based on the characteristics of the offender rather than the crime committed have led to variations in sanctions that many believe are attributable to extralegal factors such as the offender’s sex, ethnic origin or socio-economic status.

2.18.2 Determinate sentencing

Within determinate sentencing, the legislature established a presumptive range of confinement for various categories of offences which allows the judge to impose a fixed number of years from within the range and then the offender will serve the term minus time off for good behavior (Spohn, 2002: 225). In this approach, offences were classified according to seriousness with a wide range of sentences for each class determined by the legislature. When the judge sentences an offender to imprisonment, he or she sets a fixed term of imprisonment within that range for each offender. Unlike in indeterminate sentencing where the parole boards determine the sentencing, within determinate sentencing the judge defines the amount of time that a person should spend behind bars. However, if an inmate obeys the rules and co-operates with officials, they accumulate good behavior points which may accelerate their release. According to Champion (2008: 7), there are three types of good behavior credits that may be accumulated by inmates, i.e. statutory good time, inmates acquired good and meritorious good time. Within statutory good time, inmates acquire good behavior credits by doing their time without problems or incidents. Within earned good time, inmates acquire good behavior credits by doing more than

just refrain from problems or misconduct, they have to participate in educational and self-improvement programmes. Within meritorious good time, good behavior credit is earned by exceptional acts or services. It is possible for offenders to earn all three types of credits during their incarceration.

Unlike in the indeterminate sentencing approach where offenders are uncertain as to how much time they will serve, certainty is offered in determinate sentencing. However, like the indeterminate sentencing approach, determinate sentencings also leads to sentencing disparities and sometimes gross sentencing disparity as judges pick and choose numbers within the imprisonment range offered by the legislature (Branham & Krantz, 1994: 85). The range of sentences is so broad in a manner that the judge's decision goes unregulated which, in turn, results in inequalities.

2.18.3 Presumptive sentencing or sentencing guidelines

According to Champion (2008: 8), presumptive sentencing “is a specific sentence usually expressed as a range of months for each and every offense or offense class”. They are sentencing grids which are issued by the legislature in order to indicate to the judge the penalty that the legislature deems appropriate for a particular crime in light of the defendant's particular criminal history (Lynch, 2004: 245). However, within presumptive sentencing, judges are allowed to adjust the sentence, whether upward or downward, if there are either aggravating or mitigating circumstances.

Within this approach, offenses are classified on the basis of their seriousness and the offender's criminal history and then sentences are calculated based on those characteristics so that offenders who commit smaller crimes and have comparable criminal history receive identical sentences (Adler et al., 1994: 344). Judges have to weigh mitigating and aggravating circumstances in determining the appropriate sentence. If the aggravating circumstances outweigh the mitigating circumstances, then the judge's decision to intensify the severity of the sentence is justified but if the mitigating factors outweigh the aggravating factors, the judge may exhibit greater leniency. Aggravating factors determine the severity of punishment and may include whether the crime involved death or injury to one or more victims or whether the offender was on parole during the

commission of the crime, amongst others. Mitigating factors, however, are those factors that can help reduce the severity of the crime and may include whether the offender was provoked or whether the offender was suffering from mental incapacitation.

The presumptive sentencing approach is aimed at reducing sentencing disparities; to produce a fairer justice system; to reduce the severity of penalties; to incarcerate only serious offenders; to limit judicial discretion without exactly eliminating it; to allow special sentences for offenders when circumstances are clearly exceptional; to eliminate early release procedures for inmates; to make participation in treatment programs by inmates strictly voluntary; and to impose the sentence that the offender is required to serve (Champion, 2008: 12 & Senna & Siegel, 1987: 391). However, like the other sentencing approaches, presumptive sentencing also has its criticisms. Because presumptive sentences are imposed after thoughtful and careful consideration of what the appropriate sentence is, they can easily fall prey to political pressures as legislatures compete to demonstrate to the public as to how tough they are on crime. Furthermore, other critics believe that the implementation of presumptive sentencing sentences will lead to harsher sentences which in turn lead to overcrowding in correctional centers. It also shifts discretion from judges to prosecutors.

2.18.4 Mandatory sentencing

One should be able to differentiate between mandatory sentences and determinate sentences. Mandatory sentences are fixed by legislature and require that judges do not deviate from them. In mandatory sentencing, sentences to imprisonment for certain crimes or certain categories of offenders without option of probation, suspended sentence as immediate parole eligibility are imposed. Within this approach all the sentencing discretion is transferred from judges to the legislature (Lynch, 2004: 246). Mandatory sentencing limits individualized sentencing and restricts sentencing disparity; it also ensures that offenders who committed the same crime, regardless of the age, sex, or any other characteristics, are treated equally.

Mandatory sentencing also has its own problems. Spohn (2002:241) mentioned that although primary objection to mandatory sentences, more especially to drug offenses, is their excessive severity, opponents also criticize their inflexibility. In determining the sentence of an offense

which requires mandatory sentencing, the judge is not supposed to consider anything other than the amount of drugs involved. In addition, as with the case of presumptive sentencing, mandatory sentencing shifts discretion from judges to prosecutors because sentencing in this approach depends on conviction for a charge by a prosecutor, not by the judge. Although mandatory sentencing has been justified on the basis of deterrence it does not have a significant deterrent effect.

2.19 SUMMARY

There are various explanations as to what crime really is. However, the definition of crime must consist of the following elements: an act or omission, intent, violation of the elements of the criminal law and such an act should have occurred without justification or defense. It was determined in this chapter that crime is not only costly but it also instills fear amongst citizens. The responsibility of preventing crime lies with the criminal justice system. Like crime, crime prevention also has different meanings to different people. After gaining an understanding as to what causes crime, strategies to deal with it should be developed. Such strategies should consider factors such as poverty, inequality, unemployment and lack of education, amongst others. Crime prevention has been practiced throughout the history, as discussed in this chapter. Implementing successful crime prevention strategies is not easy; hence, one should have adequate knowledge of criminal behavior and all the theories associated with it. When dealing with individuals who commit crime, punishment is imposed; this ultimately leads to the sentencing of the offender.

CHAPTER 3

THE ROLE OF REHABILITATION AS A CRIME PREVENTION TOOL

“Better to make prime ministers out of prisoners than prisoners out of prime ministers.”

Lord Caradon

3.1 INTRODUCTION

This chapter presents an overview of the process of rehabilitation and how it contributes to crime prevention. The first part of the chapter includes a complete discussion of the offender rehabilitation framework and its relationship with the criminal justice system. In order to understand the situation in which rehabilitation is applied, various types of offenders including career criminals, sex offenders and substance abusers have been discussed. The requirements for successful rehabilitation have also been set out in this chapter. By the end of this chapter, the reader will also understand that the provisioning of the various rehabilitation programmes by the correctional system is not a privilege but rather a right which is owed to the offender. A discussion on various rehabilitation programmes for the offenders is also provided herein.

3.2 THE RELATIONSHIP BETWEEN REHABILITATION AND THE CRIMINAL JUSTICE SYSTEM

The belief that offending behavior can and should be changed has a huge impact on the day-to-day administration of the criminal justice system. Within the rehabilitation process, offenders must be instilled with the sense of responsibility for their criminal acts so that they can refrain from committing such acts. All rehabilitation programmes are made up of activities that are designed to remove conditions which are in the offender and that have led to his or her illegal behavior. The criminal justice system, with all its problems, has the responsibility to immobilize dangerous and seriously disturbed criminals in the community (Carney, 1979: 24). The ensuing sections of this study offer a discussion of each component of the criminal justice system and its role in the rehabilitation process, as discussed by Conklin (2010: 380).

3.2.1 The relationship between rehabilitation and the police

The police function is not generally considered rehabilitative because police deal with those people who are suspected rather than those convicted of breaking the law. It will be difficult for police to attempt to rehabilitate suspects because they have to wait until they are proven guilty. However, police play an important role in preventing the development of criminal careers. As the most visible component of the justice system, the police conduct investigations, make arrests and book suspects. Their behavior shapes the direction of the other components of the system (Stojkovic & Lovell, 1992: 16). Through co-operation with the community not only can the police department encourage new development and growth but it can also teach the public to understand the crucial role police have in maintaining the safety and well-being of the country. The fact that, after everything else, the offender has to go back to the community makes the community an important part of the rehabilitation process.

The rehabilitation of offenders' perspective influences how the police deal with suspects. They have the potential to prevent the development of delinquency. When dealing with juveniles, police are most likely to consider rehabilitation. Police might suggest that an offender enroll in some counseling or training programme rather than arresting him or her. In some instances, the police work out agreements between juvenile offenders and their parents to report to the police regularly, attend school and make restitution which leads to juveniles avoiding incarceration and court appearances.

In addition, police officials need to be trained in understanding basic human behaviour for them to be able to make wise decisions at the intake phase of the police operation (Carney, 1979:34). They have to understand that arresting, convicting and detaining a person may launch an individual on a criminal career. Police must be able to use their discretion to screen people out of the system. For example, such officials can recommend a diversion. With that in mind, one can conclude that the police select who the other subsystems of the criminal justice must deal with. Coffey (1974: 198) states that "the administrative practices of the police subsystem virtually determine the management of the entire system of criminal justice, the input of the criminal justice system is 'selected law violation'. Although the police do not make the laws, they are

forced to be 'selective' regarding which laws are enforced...determine which offender, and how many offenders the other subsystems of criminal justice will process. And because administrative practice depends on the nature and volume of offenders involved, the administrative practices of the police subsystem determine the administrative practices of criminal justice in general – local and isolated exceptions...notwithstanding”.

3.2.2 The relationship between rehabilitation and the courts

In many states, offenders who are arrested for the first time are given an option of keeping the crime off of their record without even having to go to trial. The programme offers certain first time offenders a second chance to avoid a criminal record for the rest of their lives. Although it varies from one state to another, the basic structure for pre-trial diversion is usually the same. First time offenders for offences that are minor in nature and who appear to be unlikely to commit another offense may be given the option of pre-trial diversion. By accepting the offer, the offender enters into a plea of guilty to the criminal offense but the judge will not order such offender guilty. Because a person is not guilty until it is ordered by the judge, the person in pre-trial diversion remains between pleading guilty and being convicted. The pre-trial programme requires the offender to complete a specific set of requirements and, upon successful completion thereof, the offender's charges will be dismissed. In addition to paying the court programmes fees, offenders must meet requirements which may vary from alcohol and education to substance abuse treatment programmes. Pre-trial diversion programmes are available to both adult and juvenile offenders.

Pre-trial diversion programmes have not only been shown to be effective but also efficient with the juvenile system, in reducing juvenile recidivism. Any juvenile system's ultimate aim is to ensure that juveniles become law-abiding adult citizens and gauge whether pre-trial diversion programmes can remove juveniles from repeat offending, thus reducing recidivism (Panzer, 1987). In their 1982 study, Rojeck and Erickson concluded that even though the diversion of offenders had no significant effects on offenders' behaviors or attitudes, competition amongst community based programmes for diverse juveniles could lead to the processing of more

juveniles. Similarly, both studies by Binder and Geis (1984) and Lab and Whitehead (1988) found that diversion is more reliable as compared to other juvenile correctional programmes.

The sentences that are imposed by the courts in exchange for the offender's guilt are the product of the judge's beliefs that the kind of sentence is more likely to rehabilitate the offenders (Conklin, 2010: 381). Whether the sentence is effective or not, its intended purpose is to reform, isolate the offender, deter, reassure the community by asserting its value system over that of the criminal and demonstrate the society's official condemnation of the criminal act (Carney, 1979: 45). By entering into a plea bargain, an offender is believed to have taken a first step in the rehabilitation process because he or she has taken full responsibility of their criminal acts. Plea bargain remains an essential component of the administration of justice as the offender does not bargain the guilt or innocence but only the sentence.

The functioning of the courts in the rehabilitation of offenders is crucial. Determining whether a person is guilty or innocent and deciding on a sentence are challenging responsibilities for the courts. When determining a sentence, judges depend on their beliefs as to whether the person will be rehabilitated or not. After studying pre-sentence reports, judges decide whether a person will be best suitable for various treatment programs available in the community or in correctional institutions. In the report, an analysis of the offender's motives and emotional make up as well as offender's social, psychological, vocational, educational and delinquency history - which may have had an impact on the offense in question - are outlined. Based on this, the judge determines the most suitable sentence for the offender which will make rehabilitation possible.

3.2.3 The relationship between rehabilitation and the correctional system

Both the police and the courts introduce the offender to the correctional system. According to Quinn (2003: 1), the goals and methods which are used in detention centres, community supervision departments and parole agencies that make up the correctional system are the product of the society's belief about what constitutes fair and efficient social control at a particular time. Not only are correctional agencies designed to control and punish offenders but also to change offenders' behavior. Carney (1979: 24) notes that "the ultimate aim of corrections

requires steady, patient, imaginative progress in treatment methods, protection of the public, intelligent social planning and community organizations”. Nevertheless, rehabilitation takes a long time and, according to Rabie and Strauss (1981: 31), it can be effectively implemented to offenders who serve longer sentences. Rehabilitation requires that persons should be sentenced to imprisonment so that they can participate in rehabilitation programmes. Within the correctional system, a positive difference is instilled in offenders who are serving their sentences regardless of the nature and severity of their offense. The main aim of sentencing the offender to imprisonment should be to rehabilitate them. Within the rehabilitative ideal, the primary aim of all correctional programmes is to institute changes in the characters, attitudes as well as the unacceptable behavior of the offenders which will lead to the welfare and satisfaction of society in general (Allen, 1981: 2). Offenders should learn sound work skills and educational programmes for them to successfully reintegrate into the society.

In conclusion, the correctional system applies all the system’s efforts, techniques and methods and it has the responsibility to prevent the development of criminal behavior patterns and changing those that have already developed.

3.3 THE OFFENDER REHABILITATION FRAMEWORK

Those who believe in rehabilitation state that crime occurs as a result of mental, spiritual, educational or vocational inadequacy on the side of the offender and by correcting such inadequacy, the offender might stop his or her criminal behavior (Quinn, 2003: 13). As indicated in section 1.8.4 any planned intervention that reduces criminal activity is known as rehabilitation. The reduction of such criminal behavior can be mediated by personality, behavior, abilities, attitudes or other relevant factors. Within the rehabilitation model of corrections, the five basic steps in the medical approach to a problem are followed, i.e. examine, diagnose, prescribe, treat and reexamine (Snarr, 1996: 53). Within the correctional setup the medical approach starts with examining the offender for any flaws, after examining the offender, problems are discussed through diagnosis then the correctional system prescribes a treatment. After prescribing a treatment, the treatment is then administered and finally the correctional system reexamines offenders as to whether the prescribed treatment has been successful and, if so, offenders can be

released into the community. If the treatment has not been effective, additional diagnosis and treatment might be needed. Within the concept of rehabilitation it is recognized that re-offending can be reduced by ensuring that offenders go through programmes that will eliminate the problems that led to them offending in the first place. Phelps (1974: 4) outlined the eight ideal phases of the general rehabilitation process of each inmate:

- Referral: After arrival at the correctional centre the offender must be screened and then be referred or assigned to a programme
- Orientation: Upon arrival an inmate is assigned to a counselor who will then discuss the options that are available to the inmate including the general rules and processes that are involved in the process
- Evaluation: A diagnostic procedure to determine the deficiency of the inmate and a prescription for treatment to correct the deficiency is implemented. Such procedure should be adequate
- Guidance and counseling: This is a service that is provided by the counselor during the entire rehabilitation process from referral to closure in order to ensure that the inmate performs with his or her maximum abilities and efforts. Resources that are required to achieve a maximum potential of rehabilitation of the inmate must be made available
- Training: All the inmates should be involved in academic, vocational and social adjustment training. All teaching should allow the inmate to progress at his or her own pace
- Pre-release: This is a retesting period before the inmate is released into the society to determine how much progress was made throughout the rehabilitation programme. Special attention will then be given to areas where there are shortcomings and general review of all subject matter is covered in this period. The counselor then compiles the final work and recommends the offender for job placement
- Release: This is where the offender returns to the society. The counselor plays an important role in this transition by ensuring that the offender deals with every problem that he or she encounters

The correctional system offers programmes that seek to provide skills in self-evaluation and self-development in order to help offenders in their quest for greater self-knowledge. This is because, to many, imprisonment can be a wake-up call – a time for introspection and the evaluation of

one's self - a time to reflect on the past, the present and the future. Offenders, by virtue of being humans, have the right like anyone else to make a contribution within their society and, for them to achieve this, their offending behavior should be altered for them to cope with their personal and social stress. By training them to develop their abilities well enough, they will be able to find a place in the demanding labour market. An offender must be transformed into a socially acceptable being. Offenders should, however, not be exposed to programming that degrades them but rather that which empowers them because, at the end of the day, it is their choice to decide whether they want to be rehabilitated or not.

3.4 SOME NEGATIVE ASPECTS REGARDING REHABILITATION

In his 1974 study of 231 programmes that involved the evaluation of treatment methods that used a control group and that employed an independent measure of the improvement of the secured treatment method, Robert Martinson concluded that offender rehabilitation was largely ineffective (Smith and Berlin, 1988: 84). According to Martinson, rehabilitation efforts that were recorded at the time had no appreciable effect on the recidivism rate. However, various authors have criticized Martinson's findings. Specifically, Smith and Berlin (1988: 86) state that Martinson's conclusion was based on programmes conducted up to 1967 and after that there has been positive outcomes in other studies. They provide an example of the 1978 study by Paul Gendreau and Bob Ross who surveyed treatment programmes involving juveniles and adult offenders. They employed techniques which included family intervention, contingency management, counseling, diversion and biomedical treatment. After the study, successful results were obtained in treating alcoholism, drug addiction and sexual deviation which concluded that rehabilitation worked within the offender population. Prior to 1967, there were many studies which pointed to the failure of correctional treatment. Reasons for such failures in evaluating these programmes, according to Gendreau and Ross (1978), were on the side of the researchers who:

- Sought a single cure for the complex problems in corrections
- Slavishly set up recidivism as the only criterion and disregard outcomes such as improvements in the areas of interpersonal reactions, education, vocational adjustments and family relations

- Did not take into consideration individual differences in treater and treated
- Failed to take into account the inadequacy and insufficient time spent in treatment programmes surveyed
- Were not aware that programmes that have established positive links between an institution and the community are more likely to be successful in lowering recidivism than are programmes conducted in isolation

With the above in mind one would expect the current status of rehabilitation programmes to be effective. One would expect post-Martinson programmes to inspire further programmes in treating the criminal offender, since the ‘nothing works era research has demonstrated that rehabilitation can be effective, provided that it is done in the right order with the right people and for the right length of time. However, in this lifetime, we still have problems that stand in the way of executing effective rehabilitation programmes. Institution size, geographic location of the facility, nature of the inmate populations, funding and the availability of personnel have been identified as factors that significantly affect programmes that are offered with correctional institutions (Embert & Kalinich, 1988: 6). It is difficult to co-ordinate and administer rehabilitation programmes in efficient quantities in large institutions as opposed to small institutions.

Furthermore, it is also difficult to co-ordinate rehabilitation programmes in maximum security facilities where inmates’ movements are restricted. Rehabilitative programmes not only require intra-institutional movement but also require more staff which may result in less co-operation of staff and programmes being less accessible to inmates. Another factor that poses a significant challenge to the co-ordination of rehabilitation programmes is overcrowding. Not only does overcrowding create additional burdens on staff but it also increases tensions between offenders and staff. According to Hesselink-Louw (2007), custodial staff and practitioners within the correctional system are overwhelmed by an unmanageable workload which contributes to the ineffective implementation of rehabilitation programmes. Most correctional centers remain understaffed especially with regard to specialist services which renders in-depth, long term therapy and relapse prevention services to offenders. This, in turn, hampers rehabilitation efforts as most offenders have no access to correctional professionals such as social workers,

psychiatrists, religious care workers, educationists, psychologists and criminologists which form an integrated rehabilitation team.

According to Clear and Cole (2000: 319), institutional programmes are also affected by society's expectation that offenders will receive free and extra services at the expense of law-abiding citizens. Within the principle of least eligibility, offenders who have been convicted of criminal conduct should be least eligible of all citizens for social benefits. As a result, offenders should not be provided with institutional benefits such as education and medical treatment. Because of this principle, correctional administrators struggle to offer quality services to offenders that may exceed that of law-abiding citizens. The public does not approve of programmes that seem to be rewarding criminal conduct; therefore, correctional programmes frequently represent only weaker versions of free society programmes. Even though offenders can be offered job training programmes, they are not prepared for positions in higher paying or prestigious jobs. Even though offenders can be offered psychological services, they are also subjected to intensive therapy as they normally take the form of group or individual counseling sessions. Even though offenders can participate in educational courses, they are very basic and barely remedial.

3.5 CREATING THE NEED FOR REHABILITATION

Imprisonment, whether long or short-term, has a noticeable impact on human life. According to Fox (1983: 130), the rigidity and controlled, regimented, structured environment of the correctional system requires a type of individual adaptation unlike in a free society where the normal social adjustment is required. For example, the younger the person and the longer the period of years he or she is subjected to imprisonment, the greater the impact of such incarceration. Alternatively, if a person is incarcerated for the first time after reaching the age of 40, the impact will also be greater. There is wide diversity amongst the correctional system for each state. This includes the attitudes of officials, the strength in the treatment programmes offered, living conditions within the institutions, the space within the institution bearing in mind the issue of overcrowding and many other conditions that may affect the lifestyle of the inmates. Offenders themselves have different personalities. Their personalities together with institutional pressures make a difference in the effects that the institutions may have. While some people are

very vulnerable to outside influence, others with greater emotional security and resistance can remain relatively insulated from the impact of the institution. Not only do minimum custody institutions with a strong perimeter extend less pressure on occupants but they also have fewer rates of disturbances. The same can be said about community-based facilities that are designed for people who can work or study in the community. Within these institutions the impact of institutionalization is greatly reduced.

Offenders' attitudes and values have a high impact on their daily lives. Attitude implies readiness to act in a certain way in a specific social institution. It encompasses the personal and social orientation of an individual, which are often influenced by the individual's personal and social experiences. Values, however, are those priorities that the individual puts on various components of society which include needs, attitudes or desires. It refers to the interrelation that exists between needs, attitudes and desires. Generally, attitudes while incarcerated involve conflict with the authority and consequent feelings of resentment and face-saving explanations of the inmates (Fox, 1983: 131). Attitude also influences the relationship between staff and inmates. Greater social distance between staff and inmates will consequently lead to significant mistrust and hatred. While most staff members view inmates as dangerous troublemakers, inmates themselves view officials as vindictive and brutal. In addition, inmates also see treatment personnel as ineffective and correctional administrators as political hacks. Many inmates undermine officials because they fail to understand how an individual would earn money out of guarding another individual. To offenders, every person who works within the criminal justice system, be it the court, the police and the correctional system, is undermined. Offenders often put the blame for their criminal acts on the society and tend to deny their offenses.

Within the correctional system, the values relate to common needs, attitudes and desires of inmates. While serving their sentences, offenders generally have two primary needs, i.e. to get out one way or the other and to create an environment which will be tolerant and pleasant to themselves during their stay. There are several ways in which offenders can walk out of imprisonment including pardons, parole, expiration of the sentence or even escape if all else fails. However, creating an environment that is tolerable often creates problems. In many institutions most offenders who have demonstrated the signs of good progress are often

employed as clerks for deputy wardens, captains, chaplains, psychologists and classification personnel. They are even allowed to dress in civilian clothes and have limited contact with the outside world. These long-term trusted offenders have good relations with administrators and staff as they frequently come into contact with them than the general inmate population. Because they save time and salary that would have otherwise been paid to the officials, they start with the lowest of the status jobs which will improve over time. While doing all this, offenders must still abide with the inmate code and still associate with other inmates in order to maintain their trust and their own personal safety. They can even go as far as explaining to other inmates why certain unpopular actions may have been taken by administrators; for example, why the budget for food services was cut. Moreover, they can also play the role of middlemen between the staff and administrators and the general inmates populations where there are misunderstandings so that remedial actions can be taken. The actions of this type of inmate consequently lead to better communication between the administrative staff on the one hand and the general inmate population on the other. However, problems arise when these long-term trusted inmates misuse their positions, even though most of them do not. Those who often misuse their positions are clerks who make changes in their job assignments and cells. They go as far as sacrificing their jobs for a carton of cigarettes as payment, for example. Because it has taken them a long time to get their positions, most long-term trusted inmates do not want to jeopardize their jobs hence they try by all means to protect their status.

While long-trusted inmates enjoy their good jobs, things are different in the general population. The values are changing. The general population is deprived and restricted from many things and to them a simple thing becomes important. This includes the day's menu, the quality of the cooking, recreational periods outside and simple goods and activities.

The imprisonment process results in an institutionalized personality by which inmates acquire correctional culture, norms, attitudes and values. According to Sykes (1958: 83), imprisonment comes with pains which include the deprivation of liberty, deprivation of self-concept, deprivation of goods and services, deprivation of heterosexual relationships and deprivation of security. Offenders struggle to feel safe or relate to an unstable world based on aggression and exploitation in a setting they perceive as unjust and which has victimized them as offenders.

Because administrators and staff tend to be power oriented and vindicated, offenders find themselves in an atmosphere that is characterized by frustration, hopelessness and identification with inmate codes which comes with doing one's own time on a day-to-day basis and not bother others.

Within correctional institutions, there is a basic split between the inmates and the staff (Goffman, 2006: 79). Each group tends to conceive of members of the other in terms of narrow holistic stereotypes. While the staff often views inmates as bitter, secretive and untrustworthy, inmates view staff as mean and high-handed. As a result, the staff remains superior and righteous while inmates remain inferior, weak, blameworthy and guilty. The stress amongst inmates leads to the formation of fragmented groups according to minorities, ethnic groups, rival gangs or other identifiable characteristics.

The period of years that an inmate spends while incarcerated and always fearing for their safety and experiencing all the deprivation that comes with imprisonment results in institutionalized personality. As stated by Runyon (1983: 9), a life in imprisonment is characterized by frustrations, boredom and futility. Offenders are told when to sleep, when to wake-up, when to eat, when to send their laundry and they make few constructive decisions which in turn is dehumanizing. As a result, offenders essentially become indifferent; they serve the rest of their sentence by clock, living one day at a time and cannot relate logically to reality. However, if there is effective relation and trust between staff and offenders, it might have the following effect:

- Reduction of assaults amongst offenders and staff
- Improved intelligence gathering
- Reduction in acts of ill-discipline
- Reduction in escapes
- Improvement in the use of education and the opportunities offered within the correctional system (Jones, 2006: 32).

Goffman (2006: 85) stated that there are 4 phases that affect offenders' adaptation to institutionalization, i.e. situational withdrawal, rebellious line, colonization and conversion. In

situational withdrawal, the inmate withdraws from everything and only focuses on events that are immediately around him or her. In the mental world, this drastic curtailment of involvement in interactional events is referred to as regression. In the rebellious line, an inmate intentionally challenges the institution by frequently refusing to co-operate with staff in almost anyway. The result is constantly communicated intransigency and sometimes high rebel morale. In terms of colonization, the inmate view on the outside world provided by the establishment is taken as a whole. In conversion, the inmate appears to take over completely the official or staff view of himself or herself and attempts to act out the role of the perfect inmate. While on the one hand, the colonized inmate builds as much of a community as possible for himself or herself by using the limited facilities available, the convert on the other takes a more disciplined, moralistic, monochromatic line which presents him or her as a person whose institutional enthusiasm is always at the disposal of the staff.

In determining the factors that influence re-offending, the British Report on Social Exclusions (2002) noted that:

- Most offenders have had no, or a limited or a severely disrupted, educational background
- Most offenders have never experienced any formal employment
- There is high rate of substance abuse amongst offenders and ex-offenders as compared to the general population
- Compared to the general population, most offenders suffer from poor mental and physical health
- Because offenders often come from social excluded groups in society that regard crime as a way of life, it is difficult to understand the behavior, reasons and conditions that lead them to commit crime
- Most offenders are from disadvantaged backgrounds which either resulted from early institutionalization which limited their opportunities to develop their life skills which are needed for them to function in a society
- Most ex-offenders who are homeless are more likely to be reconvicted. In addition, most offenders lose their homes during custody

- Most offenders struggle financially and find themselves without having enough money, especially during the first few weeks after their release, which ultimately leads to their re-offending
- There is a poor relationship between offenders and their families and families are often not properly prepared or made part of the release of a family member

3.6 UNDERSTANDING THE INMATE'S WORLD

According to Clear and Cole (2000: 113), even if offenders may share characteristics of social class, race and sex, there are some noticeable differences amongst them. Because there are no two ways which are exactly alike, every offender who becomes a correctional client is different in a certain way. Hence, offenders may share the types of offences but differ in other characteristics such as prior criminal record, social class or even intelligence. Any attempt to describe a group of offenders reflects a decision to generalize about people while potentially sacrificing individualism. People tend to sacrifice individualism when discussing groups of offenders. Although this approach may simplify policymakers' jobs and correctional programming, it has little resemblance to reality. The grouping of offenders often seems to be difficult. Whether an offender is grouped as a situational or career criminal, or an elderly offender, some will fit nicely in a group while others are more difficult to place. Even within a group, all individuals will differ in some respects. Nevertheless, in order to understand the types of correctional clients that are managed and the ways in which their characteristics influence the work of corrections, the following types of offenders will be discussed: the situational offender, the career criminal, the sex offender, the substance abuser, the mentally ill offender, the mentally handicapped offender, the offender with HIV/AIDS, the elderly offender, the long-term offender and the physically disabled offender.

3.6.1 The situational offender

Situational offenders are those offenders who are unlikely to repeat offending. Even though they have broken the law, situational offenders are not given to criminal behavior in normal circumstances. Most offenders who are convicted of minor crimes are not re-arrested again.

Situational offenders enter the correctional system after having committed what is believed to be a one-time offense. As Haskell and Yablonsky (1974: 264) state, situational offenders are the once who (i) confronted a problem which required actions, (ii) took action that ended in violating criminal law, (iii) get caught and given the status of a criminal, and (iv) until the time of the offense, they were committed to the norms of the society and were indistinguishable from other people. Situational offenders have made a mistake and as a result they have paid their debt to a society for such mistake.

The situational offender presents many problems for the correctional system not only because their crimes are often serious and violent but also because they knew their victims. By virtue of their offenses, a severe punishment is deemed appropriate for them. For example, even though only a small percentage of murderers commit the same offense again, fear of a situational offender, combined with the outrage of the offense, results in a longer period of imprisonment. There is little that corrections can do once the situational offender starts the sentence because they have a positive orientation towards accepted social values, they have a solid work history and good basic employment skills. They also demonstrate the signs of adapting well in the society should parole be granted to them. As a result, there are few programming options within the correctional system for the situational offender. It becomes difficult to manage the situational offender's time while incarcerated. Even though they may participate in rehabilitation programmes, such programmes are only a means of self-improvement and their time is mostly spent in just serving the sentence.

With the current status of overcrowding, situational offenders are appropriate for early release because they pose little to no threat to the public at all. Correctional officials and parole boards are of the view that the space the situational offender occupies can be used to house far more serious criminals. The need to release situational offenders creates problems between corrections and the society in general, especially if the offender commits a crime again. As a result, situational offenders remain in custody even though others who actually represent a greater threat to society, but less of threat to corrections, are released.

3.6.2 The career criminal

The career criminal views crime as his/her only means of earning a living. Such a person may not only have numerous contacts with the criminal justice system but also view his or her punishment as a normal part of life. According to Reckless (1961: 153), the career criminal has the following attributes:

- Crime is an offender's main occupation
- Technical skills that are useful in the commission of crime are developed
- Such a person started as a delinquent child and progressed towards criminality
- As a result of his or her crime, such a person expects to serve imprisonment
- Psychologically, such person is normal.

These characteristics, however, were attributed to a small, more or less undifferentiated, group of offenders who worked at crime which included organized crime figures, white-collar criminals as well as professional criminals who worked continuously at an illegal occupation. Because various studies, including that by Blumstein et al. (1986), have concluded that a small group of active criminals commit a majority of all crimes, there has been a significant shift in thinking about the career criminal. Policy-makers shifted to referring to a career criminal as any offender who has several convictions or arrests under his or her name instead of referring to a career criminal as someone whose work is crime. Many offenders who are rearrested and convicted do admit to more crimes and their crimes are most often more than the handful for which they are being punished. In opposing Reckless's findings, Greenwood (1982) concluded that the mere existence of multiple convictions does not necessarily mean that the person is working at crime as a career but rather a person may simply be a frequent offender who shifts from one crime to another.

With the demise of rehabilitation in the 1970s came the renewed interest in incapacitation as the appropriate correctional course. Such a shift has had a huge impact on corrections. Pressure has grown to keep repeat offenders incarcerated in order to prevent them from re-offending or from their careers. This resulted in non-professional but intermittent offenders being misclassified as career criminals. The ultimate result was serious overcrowding.

3.6.3 The sex offender

The criminal justice system deals with most convicted sex offenders. According to Bynum et al. (2006: 278), sex offenders are a heterogeneous mixture of individuals who have committed violent sexual assaults on strangers; offenders who have had inappropriate sexual contact with family members; individuals who have molested children and those who have engaged in a wide-range of other inappropriate and criminal sexual behaviors. Quinn (2003: 161) states that “sex offenders not only pose a great concern to the correctional administrators but the general public”. Corrections deals with 3 basic types of sex offenders, i.e. rapists, child molesters and prostitutes. Each of the subclass has its own variety of economic, psychological and situational motivations and, for each, the correctional response is mostly influenced by prevailing public opinion about the crimes themselves (Clear & Cole, 2000: 117).

- **The rapist**

In her 1975 study, Susan Brownmiller (1975: 376) argued that rape needs to be reconceptualised as it is not a sex crime but a brutal personal assault. She stated that to a woman the definition of rape is fairly simple; it is a deliberate violation of emotional, physical and rational integrity and a hostile, degrading act of violence. In their 1985 study, Prentky, Cohen and Seghorn categorized 800 convicted rapists into 4 groups, i.e. exploitative rapists, compensatory rapists, displaced anger rapists and sadistic rapists. Exploitative rapists view rape as an impulsive and predatory act with the victim seen only as an object for sexual gratification. This kind of rape often occurs at the spur of the moment and often arises from social situations such as a casual date. It tends to see active resistance by the victim as a sexual maneuver and they often heighten their arousal. From the study they constitute 50%. Compensatory rapists are obsessed with sexual fantasies and often feel inadequate. They fantasize that their victims will probably enjoy the rape and ultimately fall in love with them but they also think that there is no woman who can possibly fall in love with them. From the study they constituted 25%. Displaced anger rapists use rape in order to displace their anger and rage. To them the victim is a hated woman in their lives such as mother or wife, they use sex in order to humiliate the victim and the victim's physical resistance often increases the offender's anger. They constituted 20% in the study. Sadistic rapists' sexual feelings are linked to aggression. An offender becomes more violent as he or she becomes more

aroused. Sadistic rapists' crimes are premeditated and may involve compulsive and ritualized fantasies. Sadistic rapists constituted 5% (Prentky, et.al, 1985).

The widespread recognition that rape is not sexually motivated gave rise to 2 broad shifts in the criminal justice system. Firstly, the crime of rape has to be redefined as sexual assault. Secondly, there was a shift towards harsher treatment of convicted rapists. This, in turn, presented particular difficulties for corrections. Conklin (2010: 169) notes that "different kinds of rapists pose different threats to society and they may respond to different kinds of treatment". Moreover, the sexual assaulter poses a security risk because he or she becomes a target for the inmates' violence.

- **The child molester**

Few offenses are attached to the stigma of child molestation. Until recently, with more open discussion of sexual issues, attention has largely been given to convicted child molesters. Based on the estimates, almost 90% of child molesters were themselves molested while still young (Greenfeld, 1997: 23). There are many factors that make child molestation a complex crime because it ordinarily stems from deep feelings of personal inadequacy on the part of the offender. Almost 20% of child molesters are over the age of 50 and the attachment between them and children gradually become converted into sexual contact. As a result of emotional attachment associated with child molestation many victims are confused by the crime and often feel guilty. Molesters however are aware that what they are doing is wrong or bad. While incarcerated, child molesters are often the target of repeated threats, actual violence and routine hostility from other offenders. In addition, molesters remain vulnerable because the correctional system has little in the way of treatment options for them.

- **The prostitute**

Prostitution is viewed more as an economic crime than sexual crime because it involves the transaction between a service provider and the customer. There have been different opinions with regard to prostitution which range from legalizing it to cleaning it up. With the high rate of HIV/AIDS, prostitutes are believed to be major transmission agents for the disease.

Nevertheless, prostitutes exist and are punished for their crimes. Like rapists and child molesters, prostitutes create a heavy burden on the correctional system. Because it is viewed as an economic crime, the correctional workers have the responsibility to find an alternative vocation for offenders; this is not an easy task bearing in mind that many prostitutes are drug dependant and have little desire to change their lifestyle. As a result, many cases of prostitution are of low priority because rather than being a public threat, they are a public nuisance.

3.6.4 The substance abuser

The increase of inmates with substance abuse problems needs to be addressed if offenders are going to be successfully reintegrated into the community. There exists a complex relationship between substance abuse and crime. The abuse of substances, such as alcohol and cocaine, may lead to the following (Quinn, 2000: 495):

- They may affect thoughts and perceptions in ways that inspire crime e.g. Create irritability
- They may be used to facilitate crimes e.g. create sufficient power to act illegally.
- They may create economic needs that lead to crime e.g. stealing to support the habit
- They may indicate conformity to a lifestyle based on criminal norms in which contract enforcement and personal stature require a violent response.

Substance abuse has an influence on the nature of the correctional population. The following discussion will focus on how drug abuse and alcohol abuse influence the correctional population.

- The drug abuser: There has been an increase in drug related crimes hence any unauthorized possession of a controlled substance is prohibited. In a 1998 survey, by the Bureau of Justice Statistics, it was found that half of inmates who are serving time for violent crimes were under the influence of an illegal drug. In addition, the survey also found that nearly a fourth of all inmates in local centres is incarcerated for drug crimes. The drug abusing offender poses a problem for both treatment and management in corrections. An offender can either be convicted for the possession of drugs, sale of drugs or any other offense committed as a result of their use. It remains the responsibility of correctional personnel to address the effects of drug dependence while the offender is in detention, on probation or even on parole. Because of the high likelihood of re-arrest, drug abusers pose a potential control problem for

correctional staff. There are low success rates on programmes that are designed for people who depend on drugs. This, in turn, represents a serious dilemma for corrections. Even though drug abuse is not considered a serious offense, criminal acts that come with their abuse are often violent and are considered very serious.

- The alcohol abuser: According to Quinn (2003: 161), alcohol plays a more significant important role in the commission of crime than most people realize. As Stinchcomb (2011: 183) states: “a long-standing problem that has plagued society well before the current war on illegal drugs concerns the abuse of legal drug – alcohol”. While drugs are mainly associated with property crimes, alcohol is mainly associated with violent and public order offenses. Because alcohol is widely available, inexpensive and legal, it poses a threat in some ways, unlike that posed by other controlled substances. The use of alcohol not only impairs coordination and judgment but also reduces inhibitions and confusions. As a result, criminal acts follow easily. Like their drug counterparts, alcohol abusers pose a problem for correctional staff, probation officers, community treatment providers and parole officers. It is always difficult to deal with them because they are often assaultive. Treating alcohol abusers is always difficult because alcohol consumption is viewed as recreational behavior rather than deviance; as a result, the only programmes that seem to work are those that focus on getting people to recognize the nature of their own patterns of alcohol use rather than on alcohol per se. Hence, programmes for Alcoholics Anonymous (AA) have proven effective. However, even with all its success, AA may not be appropriate for criminal offenders because many of them come from lower social classes. In addition, it is a voluntary programme and it clashes with the coercive nature of treatment in corrections which may require attendance at AA as a condition of the sentence.

3.6.5 Offenders with mental disorders

Society has reacted to those who have mental disorders with a mixture of fear, mistrust and repulsion throughout history (Stinchcomb, 2011: 183). Even those families who have members with mental disorders would hide them. However, things have changed, there became a huge demand for their care. When the demand arose they were detained in large remote institutions closed-off from public scrutiny. Eventually there was concern raised with regard to the

conditions of detention and the types of disorders for which they are being detained. According to Cullen et al. (2002: 143), mental institutions were regarded as dumping sites where elderly, handicapped and undesirable individuals were kept. It was believed that those offenders with visible mental problems could be treated effectively on an outpatient basis. With civil rights movements, those individuals with mental disorders eventually became correctional clients. Quinn (2003: 162) listed the criteria that the mental conditions of inmates should meet so that the appropriate treatment can be provided: (i) those inmates who cannot control their thoughts, actions or emotions, (ii) those inmates who are so retarded and cannot adapt to the demand of the institution, and (iii) those who can commit suicide anytime. Mental illness such as personality disorders, drug or alcohol dependency, depression and sexual deviations for which individuals are not legally entitled to treatment contribute to criminal behavior. There are chances for inmates to get the right treatment if they are at the right institution at the right time.

While a lower percentage of all offenders with mental disorders are placed within mental health units, the rest remains with the general inmate population. Most inmates with mental disabilities are placed in an institution with a high level security. I will now discuss the mentally ill offender and the mentally handicapped offender.

- Mentally ill offender: They pose a huge problem for corrections because their illness is often not related to their criminality. Mentally ill offenders are less likely to think about their conduct even if it is criminal conduct. Even though psychopaths are mentally ill, not all mentally ill offenders are violent and psychopathic. A study by Monahan (1996) revealed that only 3% of violent behavior is attributable to mental disorder and that people with mental disorder are more likely to be victims of crimes than perpetrators. Nevertheless, offenders with mental illnesses present a significant problem for corrections.

Classifying violent offenders as mentally ill has recently been criticized as overgeneralization because, firstly, not all violent offenders are demonstrably mentally ill. Secondly, defining someone as sick undermines the person and makes it easier to justify extreme correctional measures that are taken against such person. There is a distinction between the career criminal and a psychopath; even though they can both engage in frequent criminal activities, their distinction can be found in the description of psychopath. By definition, a psychopath is

an “asocial, aggressive, highly impulsive person who feels little or no guilt and is unable to form lasting bonds of affection with other human beings” (McCord & McCord, 1964: 2). A psychopath is a person who has no attachment to people or any rules while a career criminal is only influenced by economic gains. In reality, the distinction between psychopath and the career criminal creates a problem because a person cannot determine what the other person is thinking. One cannot determine whether another individual feels love, affection, guilt or not and decide that they should be referred to as a psychopath. The same can be said about the career criminal: such person may be influenced by material gain rather than economic gain. It is not only difficult to observe the criminal mind of a person also it is a person’s inner feelings and thoughts that can only be inferred from behavior. People tend to label a person as if such a person acts outrageous or in a bizarre manner even without any evidence or illness. In 1969, the National Commission on the Causes and Prevention of Violence (1969: 444) concluded that (i) there is no research evidence supporting the fact that the mentally ill are overrepresented in the population of violent criminals, and (ii) there is no evidence to show that people who are identified as mentally ill generally pose a greater risk of committing crimes than the general population. The commission’s findings had the following implications for corrections with regard to mentally ill offenders – that mental illness cannot be related to criminality and dealing with criminality does not mean there should be treatment for mental illness.

Because imprisonment is stressful as discussed earlier in this chapter, some offenders become mentally ill. Loss of contact with the families and other sources of emotional support can be difficult even to those who are emotionally strong. Not only do offenders feel humiliated by their conviction, they also have to adjust to the life inside which is often unsafe and within poor conditions.

- Mentally handicapped offender: These are the people whose limited mental development prevents adjustment to the society. According to Clear and Cole (2000: 126); Stinchcomb (2011: 1987) and Fox (1983: 240), the mentally handicapped are those individuals whose IQ is below 70 and have a deficiency in two or more adaptive life skills. Like any other individual, those who are mentally handicapped also commit crimes. Like mentally ill

offenders, there is no proven link between the mentally handicap and criminal behavior. However, their disability prevents them from getting employment opportunities due to limited intelligence. As a result, they often have no choice but to break the law in order to obtain the things that they want. Some mentally handicapped can be easily led to a life of crime by others and, when they break the law, their mental capacity does not stop them from being detected. Most mentally handicapped people get caught more often than other criminals because they cannot think quickly.

Mentally handicapped crimes range from property to public disorder although they can go as far as committing serious violent crimes such as homicide and other crimes against persons. When such a person is caught, they cannot be held criminally responsible because they cannot differentiate between what is right and what is wrong. Hence, they are returned to the community where they are expected to live, work and care for themselves with minimal supervision. Because they fail to adjust to the rules of the community, they often become the criminal justice's clients and ultimately correctional clients. The number of mentally handicapped offenders in corrections is quite small. Probation, diversion, incarceration and community supervision do not seem to be effective options for mentally handicapped offenders. This is not only because they are not comfortable with change or difficult to employ but also because their mental condition is less likely to improve significantly. Hence, they violate probation or even break the rules while incarcerated which leads to further penalties. In addition to being victimized while incarcerated, they are slower to adjust within the correctional environment and hesitate to participate in institutional programmes. In order to prevent such events from occurring it will be best to establish procedures for identifying mentally handicapped offenders and place them in special units which will provide them with the appropriate care, equitable discipline and life skills training to ensure their independence after release. Unfortunately, they are not easy to recognize hence they end up with the general population.

3.6.6 Offenders with HIV/AIDS

Stinchcomb (2011: 175) comments that “in recent decades a disease that knows no gender, racial or class boundaries has created a devastating impact behind bars”. Even in the future, HIV/AIDS is still going to have an impact on corrections (Clear & Cole, 2000: 128). According to Maruschak (2002: 7), HIV/AIDS infection within the correctional population is four times higher than in the general population and the deaths as a result are two and one half times as common amongst offenders as in the general public. One should bear in mind that there is no particular social or demographic groups which are highly at risk of contracting HIV/AIDS but rather it is the high risk behaviors that people undertake that place them in danger. No one is safe because most of the people being affected nowadays include children who are the victims of those who have been involved in high risk behavior like engaging in unsafe sexual conduct or sharing needles.

Offenders with HIV/AIDS pose a problem for correctional administrators, especially on policy issues. Policies that cover areas of prevention, housing those who are infected and providing medical care to the infected should be developed by correctional administrators. However, this is often difficult because of either legal, political or budgetary issues that limit their ability to make the best decisions. I will now discuss prevention, housing and medical care.

- **Prevention:** The most effective way of preventing HIV/AIDS is knowledge about the virus. People should first know how the virus is transmitted in order to prevent transmission. Failure to understand the transmission of HIV/AIDS leads to a high risk of acquiring and transmitting the disease. In a study by Merianos, Marquart and Damphouse (1997) it was uncovered that people in the free world who represent the feeder population for correctional institutions – whether young, poor, undereducated or minority males – have little knowledge about HIV/AIDS. It is always difficult to prevent the spread of HIV/AIDS because the transition period from infection to showing the symptoms takes long. People may engage in high risk behavior without being aware that they have been infected. There is a relatively high number of HIV/AIDS transmissions within the correctional institution even though some of the offenders were infected before they were admitted.

The correctional system now offers educational programmes about HIV/AIDS to staff and inmates. This in turn promotes change in high-risk behaviors. Furthermore, knowledge about HIV/AIDS helps do away with myths surrounding casual transmission that lead to overreaction and unnecessary discrimination. However, correctional efforts to reduce and treat HIV/AIDS must first aim to reduce anxiety amongst offenders, regarding their own status and that of others. As a result, the correctional response to HIV/AIDS should have the following goals (Merianos, Marquart & Damphouse, 1997): it should determine the extent of each offender's risk behaviors; it should teach each offender about the disease more specifically how the disease is transmitted; it should be assured that offenders understand the testing procedures for the virus; and, education and counseling should be provided to offenders to help them avoid risky behaviors in the future.

Because HIV/AIDS is spread through drug use and sexual intercourse, which are common risky behaviors in correctional centers, some have suggested that condoms be made available to offenders. While some have argued that distributing condoms is like giving official sanction to unauthorized sexual activities, others have argued that it is less expensive to give condoms than to pay for the treatment of more HIV/AIDS cases. As with the condom issue, the issue of testing all inmates and new arrivals for HIV/AIDS has been widely debated. Those against it argue that HIV/AIDS testing should be kept voluntary because if that is not the case it will be a violation of the right to privacy as it will be difficult to keep the results confidential. As a result, those infected will be stigmatized and discriminated against. Alternatively, those supporting the issue are of the view that mandatory mass testing will ensure everyone's protection. They argue that the correctional system's interest in treating those infected and preventing further transmission for the disease should be more important than the right to privacy.

In conclusion, it should be noted that HIV/AIDS is a health issue and policies surrounding it should be based on accurate health information. Offenders should be aware that HIV/AIDS is not transmitted through casual contact but rather through high risk behavior which saves money through slowing the spread of Aids. It is also important to offer counseling to those

infected and their former partners as well as the people around them so that they can be aware and get tested.

- **Housing:** Whether offenders are screened and tested for HIV/AIDS or not, one should always know what the appropriate actions should be taken when HIV/AIDS is detected. Offenders who are diagnosed with the disease should be taken care of even though it is expensive. It has become extremely difficult for correctional administrators to determine where to locate HIV/AIDS infected offenders; i.e. whether they should separately detain them or place them together with the general population. Even within the inmate population, there are different views. Those inmates who are not infected are of the view that it is cruel and unusual punishment for them to be unprotected from the infected people. However, those who are infected argue that to be housed separately is a violation of their rights and they should not be discriminated against solely because they are living with HIV/AIDS. Nevertheless, Olivero (1990:114) concluded that “the segregation of infected prisoners was mandated to protect both the HIV/AIDS victims and other prisoners from tensions and harm that could result from fears of other inmates”. As a result, correctional administrators have selected among various housing options, bearing in mind factors such as the number of infected inmates in any given population and the cost of having separate facilities. Other correctional administrators decide to keep those infected with the general population but with the provision of special treatment to reduce the spreading of the disease.
- **Medical care:** It is the responsibility of every correctional system to provide medical care to all offenders including those infected with HIV/AIDS. Due to the fact that offenders suffering from the disease suffer from severe psychological problems in addition to physical problems, it is only appropriate to provide counseling and support services to them and their families. Medical provision for HIV/AIDS patients is costly and the correctional system spends a lot on taking care of them. Some believe that they should be granted parole so that they do not spend their last days incarcerated, yet there is a moral and legal obligation to make sure that they are not just dumped on the streets.

3.6.7 The elderly offender

When the general population ages the correctional population also ages. Quinn (2003: 164) and Clear and Cole (2000: 131) attributed the growth in older offender population to two factors, i.e. the aging of the national population as a whole and tough new sentencing laws. Lengthy sentences for serious crimes, long mandatory sentences and life sentences without parole result in many offenders spending their lives incarcerated. Quinn further stated that older inmates can be divided into two categories. Firstly, those who have committed serious crimes while still young and received longer sentences that forced them to grow old while incarcerated. Although these types of offenders are less likely to commit crimes after release, they also have little social support and few job skills. Secondly, there are offenders who are sentenced in their old age mostly for financial crimes or sexual crimes. Most of them are first time offenders or career criminals. As opposed to young offenders, people who are sentenced to imprisonment late in their lives are more often convicted for violent crimes; moreover, they usually conform to mainstream norms and are less impulsive and hostile. This type of offender has not lived a criminal lifestyle before and they adjust well in the correctional environment as compared to their younger counter parts.

Most older inmates suffer from substance abuse, poverty and bad nutrition and they have serious health problems in comparison to younger offenders who have different physical, mental and emotional needs. Correctional administrators have the responsibility to address their unique needs. Older inmates usually need increased medical care. In addition, older offenders have different social interests. They are less likely to participate in physical recreational and vocational programmes. In some instances, they do not eat the same food as other inmates.

Although most of them have committed serious crimes, chances that older offenders will violate the rules of their detention are very slim. In fact, they tend to be more stable and dependable and ultimately occupy positions of trust. Hence, most officials agree that elderly offenders, specifically first time offenders, need to be integrated differently from repeat offenders. Older offenders have an impact on security and classification. Officials must be trained to help them handle a unique set of social and emotional needs.

Older offenders find it difficult to adjust to life outside because of the longer term for which they have been institutionalized. They find it difficult to make their own decisions because they spend most of their time being told what to do. With overcrowding, some suggest that older inmates be released to the community.

3.6.8 The long-term offender

There are more people who are serving longer sentences of imprisonment. Those long-term offenders are often the same people who then become elderly offenders. In their 1990 study, Bonta and Gendreau uncovered substantial differences in the way some long-term offenders respond to some other offenders; they experience severe stress, depression and other health problems. Emotional stress generally occurs at the early stages of their sentence rather than at later stages. Long-term offenders, however, do not pose many problems for correctional administrators as compared to short-term inmates. It is the responsibility of correctional administrators to identify programmes that will make their stay worthwhile. They should (i) maximize their opportunities to exercise choice in living circumstances, (ii) create opportunities for meaningful living, and (iii) help them maintain contact with the outside world (Flanagan, 1991: 51).

3.6.9 The physically challenged offender

Offenders who are physically challenged pose an enormous challenge for the correctional system. These offenders include those who are not able to see, hear, speak, walk and have faced major restrictions due to a disability (Stinchcomb, 2011: 192). Law dictates that physically challenged offenders have access to programmes and services that are available to the general population. They should also have access to reasonable accommodation and other facilities. If that is not the case, correctional institutions are compelled to make physical changes in such a manner that facilities are accessible to those with disabilities. However, these changes come at a cost. As Quinn (2003: 164) stated, “ramps will have to be added to some buildings, vehicles will need special equipments and new services will have to be provided for the hearing- and visual-

impaired”. Providing the need for the disabled not only requires creativity but also sensitivity. There might be a need to train officials on aspects such as searching a person who is wheelchair bound and how to handcuff inmates with artificial arms. Inmates’ uniforms may have to be specially tailored for those who have physical disabilities. Their meals should also meet their dietary requirements. Correctional programmes should also be appropriate for these types of inmates; with relevant screening and training to avoid instance of abuse, some inmates might even provide basic needs for disabled inmates, for example, they may volunteer to push their wheelchairs.

3.7 MAKING REHABILITATION WORK

Within the rehabilitation approach, it is believed that something positive should happen to the offender while incarcerated. According to Stinchcomb (2011:40), criminal sanctions should be used as the opportunity where offenders can make positive changes in their lives. In his article “How to create madness in prison”, Kupperts (2006: 49) offered a recipe for what he believes would create madness within the correctional system if not satisfied. The recipe is as follows:

- Firstly, overcrowd the institutions with a large number of drug users and petty offenders and make use of longer sentences across the board
- Get rid of the many rehabilitation and educational programmes so that offenders are relatively idle
- Add to the mix a large number of offenders who have severe mental conditions
- Do not allow visits for offenders, thus cutting them off from the outside world
- Respond to the emerging violence and psychos among offenders by making use of isolative settings such as super maximum security units
- Ignore the many traumas that offenders bring within the correctional system and those that they experience while inside, such as rapes
- Ignore the many signs of mental illness
- Label offenders who are out of control as psychopaths
- Deny mental health treatment to those who show signs of psychopaths and warehouse them within the super maximum security units
- Watch the recidivism rate increase and ignore it.

What Kupers is trying to show here are the necessities that should never be ignored when it comes to the treatment of offenders. People expect offenders to leave the institutions with pro-social attitudes. By identifying those personality traits that led to the commission of the offense, offenders can be prevented from committing further crimes. Because of the increasing crime rate, the rise in the offender population and costs, the large number of offenders who return to the society and the high recidivism rate, society has come out in support of rehabilitation for offenders (Jarvis, 1977: 149). While incarcerated, offenders must be provided with essential programmes aimed at their rehabilitation. Gendreau and Andrews (1990) identified the most common characteristics that must exist within the rehabilitation programme for it to be successful:

- A programme should be supported by the community and policy-makers
- A programme must be supported by qualified and involved leadership who in turn understand programme objectives
- A programme should be designed and implemented around proven theoretical models which begin with assessment and continue through after care
- A programme should include the use of standardized and objective assessments of risk and need factors so that appropriate program assessments for offenders can be made
- A programme should target those attributes that produce crime and uses treatment methods that have proven to be effective to prepare the offenders for their return to the community
- Programmes must be delivered in a manner that is consistent with the ability and learning style of the individual who is being treated
- Programmes should be implemented by well-trained staff
- Programmes should be regularly evaluated to ensure quality.

3.8 REHABILITATION PROGRAMMES AVAILABLE TO OFFENDERS

The focus of rehabilitation programmes should be to help offenders to overcome their self-defeating thoughts and behaviors. While helping offenders to overcome their faulty thinking, they should be seen as people rather than criminals. It should be kept in mind that during their life of crime, offenders have many opportunities to make the right decisions but choose

otherwise. Identifying and treating those personality traits that led to the commission of the crime can prevent the offender from committing crimes. The rehabilitation approach is based on the assumptions that a defect within the individual offender is what causes his or her criminal behavior. According to Stojkovic and Lovell (1992: 224), Clear and Cole (2000:3) as well as Quinn (2003:224), the following rehabilitation programmes are offered to offenders: educational, vocational, recreational, religious, psychological counseling and therapy. Because certain types of offenders may require specific attention as a result of the types of their offenses, there are specialized treatment programmes which are offered and these include programmes for substance abuse, sex offenders, mentally ill, offenders with HIV/AIDS, female offenders, the elderly offenders, long-term offenders, physical disabled offenders and juvenile offenders.

3.8.1 Educational programmes

The right to education is based on the values of human dignity. According to Coffey (1975: 146), education has been part of correctional programmes for a long time. Many offenders who are admitted have so many educational challenges which make it difficult for them to adjust to a free society. Educational programmes that are offered at correctional centers are aimed at ensuring the following:

- It helps the offenders to acquire or develop personal resources and attitudes which in turn help them after their release
- It helps those offenders who have difficulties in reading, writing and numerical skills so that they can be more competent
- It helps those offenders who were engaged in either full-time or in regular, part time education and training, before their convictions, to continue with their studies
- It provides advice and guidance on the opportunities that are available to offenders after their release (Gowdy, et al., 2003: 14).

Nowadays, survival in the society depends largely on literacy; hence, it is necessary to provide offenders with the academic and career skills that are required for them to become constructive members of society. As Stinchcomb (2011: 251) stated, making inmates productive is the first step to keeping them out of correctional centers and making them literate is the first step towards

making them productive. Not only are educational programmes for offenders aimed at providing the tools of literacy, trade or specific job skills but they also enhance the offenders' work habits, pride, dignity and self-esteem. For example, it can be an uplifting experiment if an offender who was illiterate before incarceration is able to read a story to a child during a visit.

According to Snarr (1996: 173), typical correctional education programmes include Adult Basic Education, General Education Development (GED), post-secondary and life skills programmes. Adult basic education stresses literacy as the foundation of further education and training. Basic education programmes offer offenders the ability to read and write which are more important in modern society. Many adult offenders are illiterate and try to hide it from others. Not only do they have very limited reading skills but others go as far as avoiding situations where they would be asked to read or write. Hence, basic literacy programmes pay more attention to low-level readers and non-readers. Unlike basic education, general education programmes, however, focuses on further development of reading, language, arts, composition and mathematical skills. These, in turn, help inmates become more employable after their release. Offenders who participate in the GED write examinations that test their ability in basic academic areas such as reading, writing, science and mathematics (Clear & Cole, 2000: 328). Many offenders who complete this programme can satisfy the minimum educational requirements for most non-professional jobs as it is the equivalent of a high school qualification. From the GED, offenders can also improve their self-esteem and better their parenting skills and practices. Post-secondary education is credible to those who want to advance their educational level. Post-secondary education is offered through distance learning as well as through arrangements with local institutions of higher education. However, post-secondary education comes with its own problems. While basic literacy and GED can be offered by correctional employees, post-secondary education requires fully qualified instructors. Many citizens argue that inmates, due to their offenses, should not be offered the opportunity that is outside of the financial grasp of many in the general public. Nevertheless, a post-secondary qualification provides an inmate with a greater range of occupational chances upon his or her release (Stojkovic & Lovell, 1992: 229). Offender rehabilitation will be achieved if an ex-offender is able to obtain stable employment which provides a salary that supports his or her family.

Alternatively, life skills programmes provide a wide variety of activities that teaches inmates the necessary skills that most people acquire through the normal socialization process. Many offenders are unable to function effectively in the society due to many reasons which include, amongst others, deficiencies in basic academic skills which comes with a lack of basic life skills. Life skills programmes offer the following skills (Silverman, 2001: 385):

- Employability or job search skills which may include career awareness, the use of classified ads, writing business letters and resumes, filling out application forms, interview techniques and appropriate job behavior
- Consumer skills which may include money management, comparative shopping, understanding labels and bills, using credit and shopping for food, housing, clothing and transportation
- The use of community resources which may include using the telephone, obtaining help from social service agencies, interpreting postal forms, using the library and finding child care
- Health and safety skills which may include reading warnings, using prescription drugs, practicing first aid and maintaining a balanced diet
- Parenting and family skills which may include child-rearing practices, understanding child and wife abuse and finding alternative ways to settle conflicts
- Civic skills which may include passing a driver's test, registering to vote, interpreting legal forms, filling out tax forms and understanding the bill of rights.

3.8.2 Vocational programmes

As with the level of education, most offenders have limited job skills and report low earnings prior to their incarceration; thus, while incarcerated, offenders should be provided with vocational programmes that are based on their needs, general market conditions and institution labour force needs. Most of the recent research studies conducted indicate that there is a correlation between vocational training and a variety of outcomes generally considered positive for society or correctional institutions, i.e. lower recidivism rates, lower parole revocation rates, better post-release employment patterns and better institutional disciplinary records (Gerber & Fritsch, 1995).

According to Coffey (1974: 145) vocational programmes prepare inmates for productive lives by providing skills and work habits which are seen by the community to which the inmate must ultimately adjust as desirable. It is better to have self-supporting ex-offenders who contribute to the economy than those who are draining it. Because inmate populations differ significantly amongst institutions, it is important to take into consideration intake interviews, as they yield the following important information (Jenkins, 1999: 88):

- Offenders' education prior to incarceration
- Offenders' functional performance
- Offenders' prior skills training
- Offenders' employment history
- Offenders' prior specialized treatment, including special education services

Vocational training attempts to teach offenders suitable job skills because most of them lack the attitude necessary to obtain and keep a job such as punctuality, accountability, respect for supervisors and kindness to co-workers. In addition, offenders may even lack the ability to identify a job opening and survive an interview (Clear & Cole, 2000: 330). Even though vocational programmes may differ from one institution to the other, they however include auto mechanics, welding, printing, construction trades, woodworking, agriculture, data processing, bookkeeping and cosmetology amongst others. They mostly focus on specific job skills and good work habits. Vocational programmes are also regarded as an important factor in reducing recidivism because inmates attain marketable skills related to specific jobs on the outside. For vocational programmes to be successful there should be appropriate materials and equipments which are smaller than those that are currently being used in business and industry.

Because rehabilitation is not entirely the responsibility of the correctional system, partnerships may be formed with many other public and private agencies and even community resources in the provision of vocational programmes (Hardy & Cull, 1973: 141). Much can be accomplished through interagency agreement as they require acceptance of common goals and purposes, and an understanding of the roles, responsibilities and methodology of each discipline, willingness to co-ordinate rather than duplicate services and a shared responsibility for community information

and education. Similarly, Neser (1993: 325) outlines the advantages that training partnerships which are entered into with external stakeholders have on vocational programmes:

- Training facilities, equipments and the development of a climate for training programmes' duplication is restricted
- Both short and long-term offenders can be involved in building and workshop training
- Offenders receive certificates after completing different levels of training unlike obtaining a certificate only after completing a trade test
- Instructors can be trained by external organizations and, in turn, provide training as representatives of those external institutions which only evaluate, control and issue certificates
- Certificates issued by external institutions are more widely acknowledged than those issued by the department as they can help offenders obtain greater success with finding work after release.

According to Phelps (1974: 10), there are many factors that have an impact on vocational programmes and should be satisfied for a programme to be successful; these include:

- The amount of time spent providing guidance, special education and job-training for each offender
- The inability of the offender to drop out of training when he or she feels like it
- Developing good work habits for the offender
- Developing socially acceptable standards of living
- Satisfactory job placement after release or parole
- Follow-up after employment

3.8.3 Recreational programmes

It is a constitutional right for offenders to have access to recreation and physical exercise within security constraints (Silverman, 2001: 461). Offenders must be provided with sufficient indoor and outdoor space including adequate time for recreation. It is a goal of every correctional system to have a well run recreational programme for offenders (Kahler, 2006: 95). In general, correctional recreation reduces inmates' boredom and idleness which, in turn, contributes to

general correctional security. Programmes for different sexes, ages, mental capacities and security levels should be made available to offenders. Unlike other rehabilitation programmes, recreational programmes do not require an offender to be able to read or write in order to participate in them. Institutional recreational programmes differ from one institution to another. However, the general recreational programmes include:

- Organized, outdoor, group extramural activities which include football, basketball, baseball and volleyball
- Organized, indoor, group activities which include card games and choirs
- Individual activities which include weightlifting, jogging, walking and playing musical instrument
- Arts and crafts programmes which include ceramics, painting and leather work
- Television, radio and movies
- Talent shows and drama productions
- Entertainment from outside volunteers, including music festivals
- Club activities (Kahler, 2006: 97),

Recreational programmes go as far as having an impact on the offenders' self-image, resocialisation and ability to express themselves. This is mainly because many offenders commit crimes as a result of inadequate, faulty or deviant socialization. Not only is recreation aimed at filling time for offenders, Clear and Cole (2000: 339) state that there are also two primary functions of recreation. Firstly, recreational programmes form an important part of the corrections social life; because offenders vary in intellect and physical capabilities, a variety in recreational programmes makes it possible for offenders to form positive social contact with others who share their interests and abilities. Secondly, recreational programmes can be rehabilitative because, while participating in them, a person can learn social skills such as co-operation and teamwork. In addition, offenders' experience and self-image can be boosted.

All inmates -whether in minimum, medium or maximum security custody - should have access to recreational programmes (Stinchcomb, 2011: 258). The main aim of any recreational programme within corrections is to assist each resident as much as possible to find a recreational pursuit that will occupy his or her free time outside. Fox (1983: 76) states that "people tend not

to get into trouble while they are working, eating or sleeping; they get into trouble during their leisure time. Consequently, an effective leisure time activity program in correctional institutions should be designed to transfer to activities after release”. He further provided an example of boxing as one of the most popular sports in correctional institutions. He stated that many of the leading boxers in the world have been incarcerated before and that is where they learnt to fight; moreover, because boxing is an individual sport rather than a team sport, those people who find it difficult to relate to others find boxing useful.

Recreation makes correctional institutions safer places as sports such as softball, basketball, football and other physical activities are directed towards dealing with stress and anxiety, amongst other issues. Reading and movies allow inmates to become more involved in something other than their current circumstances so that they can at least forget other oppressions of the correctional institutions. According to Welch (1990: 5), recreational programmes can also help build offenders’ self-image and teach social skills, self expression, how to think creatively, aggression control, self-discipline and respect for authority.

In order to have effective correctional recreational programmes there has to be well-trained professional staff, adequate funds for equipment and supplies and adequate areas and facilities for both indoor and outdoor activities (Silverman, 2001: 407). It is up to the correctional system to have specialists who will be responsible for channeling the leisure time of offenders, constructively. More recreational programmes and activities will result in a more complex scheduling process. Failure to provide effective recreational programmes can lead to tension amongst the offenders, which manifest in a range of behaviours from sexual assaults to personal depression. Not only will effective recreational programmes lessen the tension amongst offenders but it will also improve their behavior thereby bringing benefits to everyone involved in the criminal justice system (Coffey, 1974: 146).

3.8.4 Religious programmes

The influence of religion as a treatment in the correctional setting is as old as the history of corrections itself (Dammer, 2002: 35). The potential of religion as a mechanism for social

control and a tool that influences behavior in areas of crime, policy and offender rehabilitation is widely recognized. Correctional institutions are known as places where violent crime, drug violations, illegal gambling and illicit sexual behavior occur every day. This, in turn, poses challenges for the administrators who, firstly, have to rehabilitate offenders while punishing them and, secondly, have to make offenders acknowledge their offenses while helping them search for the good that lies within (Thomas & Zaitzow, 2006). Religion plays an important role in changing offenders' behavior. Coetzee, et.al. (1995: 144) differentiated religion in a free society and religion that is being offered within the correctional system:

- As a result of their imprisonment, offenders experience a crisis, hence, preaching within correctional centers is mainly a preaching to people experiencing a crisis
- The uniqueness of the correctional environment should be taken into account. Meaning that the religious needs of the offenders can be taken care of, but the offenders cannot participate in normal religious activities from outside correctional environment, while the effort is made for the religious care and practice to take place as closely as possible to the practices outside of the correctional environment
- Offenders find themselves in a place where they struggle with self-image unlike in a free society.

There is some form of religious expression in every correctional institution as it provides many offenders with the internal stability that is required to successfully adjust within a correctional setup and upon release (Stinchcomb, 2011: 249). Because of religion, negative behavior amongst offenders can be limited. Not only are offenders who participate in religious activities well-behaved and less likely to engage in violence, they are also more likely to have a positive effect on the general offender population. They can be a stabilizing influence in an often chaotic environment thereby enhancing the safety and security of all who are within the correctional facilities. They serve as role models to other offenders.

All offenders must be given equal opportunities to practice their religion without any discrimination. Through religion, offenders get an opportunity to gather and teach each other positive things. According to Snarr (1996: 176) and Fox (1983: 68), religious workers were the first educators, counselors and social workers within the correctional system long before other professionals were introduced. The process of selecting religious workers has to be undertaken

with care because they have to serve everybody in the offender population. Such persons should be sensitive to the fact that people have different emotional needs and require different approaches to religion, and so do the offenders. Religious workers have various functions within correctional institutions. They provide three basic kinds of services, i.e. they perform traditional religious services to inmates; they counsel inmates about spiritual matters and they offer assistance in dealing with incarceration (Quinn, 2000: 254). In addition, they have the following functions:

- They help offenders during orientation
- They report on-board offenders to the institutional committee
- They provide pastoral care in groups and individually
- They do sick calls
- They provide support during dying hours and funerals for the offenders
- They do arrangements for religious after-care
- They consult with other disciplines, refer offenders to experts in disciplines for special attention and channel the requests of offenders
- They investigate the desirability of the marriage of the offender and conduct marriage ceremonies in conjunction with social workers
- They provide offenders with bibles and other religious materials

It is not easy to determine why offenders become involved with religion while incarcerated. This is mainly because religious beliefs and practices are very personal matters whether within the correctional institutions or outside. However, religious involvement has a positive impact on offenders. Dammer (2002) identified the following reasons for religious involvement within the correctional environment:

- Through the religious environment offenders gain direction, meaning and hope to stay away from the life of crime
- Religion results in a change in behavior because of its strict rules and discipline that are practiced; this often helps inmates develop better self-control which results in good relations amongst offenders and officials

- Some offenders participate in religious activities to ensure their protection; without this protection, offenders believe that they may be subjected to blackmails, sexual exploitation and physical confrontations by other inmates
- Offenders who have been incarcerated for certain sex offenses such as child molestation and sexual assault are aware of the stigma that comes with their offenses and the possibilities for victimization, hence, their involvement in a religious group gives them enough protection
- Religious services provide psychological assistance to those offenders who are infected with HIV/AIDS because they are often mistreated by other offenders
- Through religious programmes, an opportunity to meet other inmates is presented. While for others it enables them to enjoy regular social interactions with friends and groups of individuals with similar interests; for others, it is the best opportunity to pass contrabands
- Religious programmes provide an opportunity for offenders to meet volunteers of the opposite sex, which is very rare in the correctional environment. While males look forward to meeting female volunteers, females look forward to meeting male volunteers
- Offenders who participate in religious activities have access to special resources such as food, coffee, holiday greeting cards, books, musical instruments and food privileges during religious holidays. Inmates can also obtain special favors such as access to phones and letters of reference before the parole board from the faith representative because they are often sympathetic to their needs.

3.8.5 Psychological programmes

When offenders are admitted to correctional facilities they are forced to undergo many psychological changes in order to survive the experience. This is mainly because imprisonment in general poses many personal challenges and psychological harms which are more difficult and problematic for offenders. Offenders are confronted with a unique set of contingencies and pressures to which they are required to react and adapt in order for them to survive imprisonment. In addition to the challenges that they face while incarcerated, because ultimately they have to return to the free world, they also come across challenges to their successful reintegration. Moreover, incarcerated offenders have to deal with overcrowding which comes

with inadequate living conditions which jeopardize offenders' safety, compromised correctional management and limited access to meaningful programming. As a result, a range of structural and programmatic changes are required in order to address these challenges (Haney, 2001). Hence, social and psychological programmes as well as resources must be made available to offenders in the immediate, short and long term. This implies that adequate living conditions and practices as well as new programmes are needed as preparation for release, during transition periods of parole or initial reintegration and as long-term services to ensure continued successful adjustment.

3.8.6 Individual therapy

The process of therapy not only helps the client to understand his or her attitudes and emotions but also to understand the motives that led to his or her behavior. In this process, the person accepts the responsibility of his or her actions. A trained and skilled therapist is assigned to a client and enters into a relationship. The offender and therapist frequently hold individual sessions which help the offender to examine himself or herself critically. Through these frequent and structured discussions, an offender is helped and encouraged to set aside his or her psychological defense mechanisms. The overall aim is to understand the client's problems and help solve them by mutual consent rather than giving advice. There has to be a good relationship between therapist and offender upon many factors which include common culture, common communication levels and general common frames of references (Fox, 1983: 72). There will be little or no communication at all if there is social distance between the therapist and offender. Ultimately, the decision on whether to change or not lies with the offender. The therapist must only help him or her recognize that his/her current behavior is no longer adequate for satisfying his or her needs. Hatcher (1978: 81) discussed five goals for individual therapy:

- Behavior change: Individual therapy produces a change in personality organization and structures and ultimately a change in behavior, which are both permanent. The goal of individual therapy is to turn self-actualization into a realistic adjustment to life. Within behavior therapy it is stated that certain patterns of behavior are either reinforced or extinguished through reward or punishment of that behavior. Within individual therapy not only is the individual being helped to replace faulty behavior with a more efficient one, but

the individual is also being helped to realise the assumptions that guide his or her behavior so that he or she can be more aware of them. The individual will then use his or her opportunity for choice more effectively. Within behavior change, the focus is on new learning and reeducating the client emotionally.

- **Positive mental health:** A person's success in dealing with life problems depends on three factors: (i) the person's abilities to make the best of his or her intellectual resources in learning, solving and making decisions, (ii) a person's abilities to direct, control and identify meaningful expression of his or her emotional resources, and (iii) a person's abilities to establish and maintain satisfying relationships with other people. It is the caseworker's objective to help the client achieve a balanced pattern of mental health. When the counselor allows the client to make his or her own decisions, the client learns to accept responsibilities. Although the client is given a chance to explore alternatives, the decision remains in his or her hands so that the outcomes are independent of the caseworker. Through this process, the client is helped to achieve a level of independent problem-solving and decision-making capabilities that prevent him or her from making irresponsible decisions.
- **Problem-solving:** The counseling process does not allow the counselor to provide ready-made solutions to the client because that would prevent the client from identifying possible solutions or alternatives to his or her problems. In the problem-solving process, the counselor structures a process by which an offender learns to resolve the conflict situation by himself or herself. In this process, the offender explores possible alternatives and probable consequences of each, thereby taking responsibility for the resolution of the problem.
- **Personal effectiveness:** "The effective person is seen as being able to commit himself to projects, investing time and energy and being willing to take appropriate economic, psychological and physical risks. He is seen as competent to recognize, define and solve problems. He is seen as reasonable consistent across and within his typical role situation. He is seen as being able to think creatively - that is in different and original ways. Finally, he is able to control impulses and produce appropriate responses to frustrations, hostility and ambiguity" (Blocker, 1966: 831). Because many offenders, including the general population, have unrealistic goals, it becomes difficult for them to achieve them within a short period of time. For example, to finish high school, go to college or get a job requires commitment. Going to college might require sacrifices such as purchasing an expensive automobile.

Commitment to a goal requires consistency in the attainment of the goal. A person who wants to finish college must be able to develop control of his or her time, allocate study time, work time or leisure time. By personal effectiveness a person must have a goal and reasonable means of achieving that goal. The counselor helps the offender achieve his or her personal effectiveness by helping them to realistically appraise their strength and weaknesses.

- **Responsible decision-making:** It is vitally important to learn to make responsible decisions. As previously indicated, the counselor should not make decisions on behalf of the client. In addition, the counselor should not choose alternative courses of action for the offender. Through individual therapy the offender learns what is needed to make a choice and given an opportunity to make that choice in a responsible and law-abiding manner.

3.8.7 Group therapy

By definition, Hatcher (1978: 152) states, group counseling is a planned activity in which three or more people are present in order to solve personal or social problems by applying the theories and methods of counseling in a group. Within group therapy, offenders with mutual problems come together to discuss them. According to Lipton (1988), group counseling methods are much more common in corrections than individual counseling because a number of clients can be involved simultaneously unlike individual counseling, in which one-on-one sessions are conducted and which fails to enable many inmates to receive services. A professional group therapist facilitates discussions amongst group members. Group counseling is advantageous in several ways (Fox, 1983: 74); through group counseling individual group members become involved in other group members' problems, thereby learning from them and by the mutual sharing of experiences they help to solve each other's problems.

Group interactions provide social reinforcements which are both negative and positive and helps produce change (Jarvis, 1977: 195). Not only does group counseling save time and money, by treating several clients simultaneously, it also allows enough time for planning new programmes and evaluating those already in existence. Through group counseling, management problems such as escapes, the breaking of rules and staff-inmate conflict can be reduced because through

them inmates can release their anger and frustration. A sense of belonging can enable group pressure to change the attitudes of individuals in the direction of the group's purposes which are to change antisocial attitudes into pro-social attitudes. Unlike in individual counseling where a counselor who represents the correctional system is present, in group counseling possibilities of inmates being intimidated are mitigated.

3.8.8 Behavior therapy

Behavior therapy is treatment that induces new behavior through reinforcements (rewards or punishments), role modeling and other active forms of teaching (Clear & Cole, 2000: 326). Within behavior therapy the target of the behavior change effort is not criminality but rather the variety of problem behaviors that surround a criminal lifestyle, such as verbal manipulation and rationalization, deficiency in social skills including an inability to control anger and frustrations, amongst others. The belief is that such behaviors make it difficult for a person to keep a job, avoid conflict or even handle disappointment. According to Jarvis (1977: 176), there are six general principles of behavior therapy:

- Behavior is controlled in a major way by the individual's environment
- The effects produced by the environment influence whether or not a certain behavior will occur again
- Pleasant results strengthen a person's tendency to repeat a behavior (known as positive reinforcements)
- Unpleasant results weaken a person's tendency to repeat the behavior (known as negative reinforcements)
- A person learns behavior in order to escape from a negative result or to move towards a positive result
- A behavior can be reinforced every time it occurs or continuously or once in a while, or not at all.

Within behavioral therapy, both positive and negative reinforcements are used in order to encourage desirable behavior and discourage undesirable behavior at the same time. While positive reinforcements comprise of attention, praise, money, food and privileges, negative

reinforcements comprise of threats, confinement, punishment and ridicule. Within behavior therapy, one might refer to the token economy which is a reinforcement system in which offenders who perform specific behaviors such as cleaning the living area or helping the other inmates satisfactorily are rewarded with tokens which may in turn be exchanged for privileges or desired goods. Through the token system the individual offender adopts behavior patterns that are in line with the values of the society which include: people must earn what they get; one must save up for desired things and postponing gratification is often the best way to obtain greater gratification. Behavior therapy programmes work as follows:

- Overall structure: A behavior therapy programme might include an entire facility or just a section of the facility. Offenders are selected for the programme at the reception point after they have been evaluated and classified. Mostly, behavior therapy is used with juvenile and young adult offenders. It is often offered in medium and minimum security institutions.
- Staffing: Behavior therapy can only be carried out by trained staff and mentors who understand and know how to use behavior therapy. Staff should hold regular meetings in order to discuss the programme and the problems of special offenders. The ratio of treatment staff to offenders must be high enough to allow for observation, regular contact and reinforcement as well as individual contact at least once a week. In order for a programme to run successfully, a ratio of one staff to two offenders is ideal.
- Programme structure: Within the behavior therapy programme, there are various levels or stages through which an offender must advance.

Entry level: Offenders start at the entry level which is the orientation phase with few privileges and more constraints. An offender will only be allowed to move to the next stage if he or she demonstrates knowledge and understanding of how the programme works. The level runs from two to five days and once an offender leaves the level there is no returning.

Level 1: Those offenders who have adjusted their behavior to gain release from entry level start here. The behavior therapy programme begins to work at this level and offenders get a feel for it. Desirable behavior is reinforced in the offenders until they are ready to move to the next level. At this level, offenders earn points, tokens, marks or other official reinforcers for desired behavior and they lose points for undesirable behavior. In return, offenders can exchange artificial reinforcers for things such as cigarettes, candy, soft drinks and writing papers or even use them to advance to the next level. All reinforcements are given fairly and

immediately and they should match a behavior degree. If the behavior is poor, an offender may return to his level up to the time of release. Those who fail to improve their behavior throughout the programme may be returned to any level below their current one.

Later levels: While offenders continue with the programme, they move from level to level and from privilege to privilege. In addition, they also move from artificial reinforcements to natural ones and then to social reinforces. Offenders earn their advancement by seeking behavior that bring rewards and staying away from behavior that brings punishment.

General considerations: many treatment programmes may follow the behavior therapy model including vocational training, education, recreation and work assignment. The key to the model's success lies in the understanding of its function and method by all involved. Offenders must receive immediate and fair rewards or punishment even though it lies with the staff to set up special reinforcements to fit individual needs. Those offenders who show progress must be allowed to advance to the next stage (Jarvis, 1977: 179).

3.8.9 Social therapy

Social therapy comprises of both aspects of traditional therapy and behavior therapy. Within social therapy it is assumed that the offender must exist within a pro-social environment in which he or she is rewarded for honesty and taking responsibility for his or her behavior, and is challenged when acting dishonestly or irresponsibly. In terms of social therapy, offenders are provided with programmes that help them develop non-criminal ways of coping. Clear and Cole (1994: 358) maintains that social therapy requires a significant shift in institutional policy to become supportive of a pro-social institutional climate and should meet the following requirements:

- Institutional practices must be democratic rather than bureaucratic. Offenders will view themselves as less important if they have no say in the rules that govern them or their implementation. Within this approach offenders are offered the opportunity to participate in making rules and maintaining institutional order.
- The programme must focus on treatment rather than custody. Because the aim of the correctional system is not only to take offenders away from their communities, but also to

attempt to change their behavior, it must be ensured that they participate in programmes that were designed to promote their growth and emotional maturity.

- Humanitarian purposes have priority over institutional routines. It is important to make sure that the running of the correctional centre does not have a negative impact on the offenders' needs for educational and vocational training.
- Flexibility is valued over rigidity. Inmates must be given enough time to participate in programmes that will lead to their development and they should spend less time doing something that has little to no impact on their development.

3.8.10 Programmes for substance abusers

As mentioned earlier in the chapter, substance abusers comprise of those inmates who depend on drugs or alcohol. There is a strong link between substance abuse and crime. As indicated, most drug-related crimes are economical and are committed in order to support the habit. When designing a programme for substance abusers one must understand that heavy drinking, drug use and crime develop over an individual's lifetime and are influenced by individual characteristics, family, school, peers and the social context in which the individual finds himself or herself. According to McMurrin (1996: 210), this can best be described in a developmental risk factor model where an accumulation of biological, psychological and social risk factors combined with an absence of protective factors across one's lifespan eventually leads to heavy substance use and associated crime.

Risk factors for substance use and crime are highly similar along the developmental pathway and they include early impulsiveness and hyperactivity, poor family management practices, such as unclear expectations of behavior, harsh discipline and lack of rewards for positive behaviors, problems with conduct since childhood, failure at schools and, finally, being surrounded by delinquent peers in adolescence. For many, during adolescence it is easier for them to experiment with drugs and alcohol where they are readily available and once there is substance use signs there is a chance that substance use and related problems might develop into crime. Those who find themselves using substances and committing crimes find it difficult to sustain relationships, keep a job and alternative lifestyles seem impossible; the individual eventually gets hooked in an

antisocial way of life. For a person to lead a life without abusing substances and committing crime, general changes are required. Such changes include change in accommodation, work, leisure activities, social networks and close relationships. For changes to occur, the following should happen:

- Identify the needs that are being met by the anti-social lifestyle and identify the things that a person will miss if he or she stops using drugs, drinking or crime
- Identify and support the development of alternative activities that will satisfy those needs
- Encourage the client's commitment to a new lifestyle and a new personal identity by reviewing the decision to change, developing new social networks and getting rid of the addiction or criminal identity (McMurrin, 2006: 192).

Alcoholics and drug users, as well as addicts, do not admit that they have a problem unless it might be considered a mitigating factor in their sentencing. As Walsh (1992) puts it, "the ability to identify the alcoholic and the problem drinker is an indispensable art for all criminal justice counselors". If they are not identified they will do whatever they can to hide it while under supervision. During first contact it is important to identify drug users. It is important to first check the offender's record for a history of drug-related arrests or previous drug treatment. As for alcoholics, the most obvious indicator of a drinking problem is a record of alcohol-related arrests which might include drunk driving or drunk and disorderly conduct. It is important to inquire about the client's drinking patterns and find out about the frequency and the amount of alcohol consumed weekly, the frequency of legal problems due to drinking and the amount of time and money spent on drinking. By determining these factors, the client can be convinced that he or she has a drinking problem.

The manner in which offenders were or are involved in drugs and alcohol determines whether any form of treatment is needed. According to Clear and Cole (2000: 331), the most effective substance abuse programme has the following components:

- It occurs in phases, with the residential treatment phase lasting between six to twelve months
- While participating in a residential treatment programme, participants earn more privileges in a therapeutic treatment setting

- Different forms of treatment, which include individual therapy, group therapy and vocational rehabilitation are used
- Staff and community representatives closely co-ordinate plans for release
- Even after release, treatment continues in the form of therapy groups accompanied by drug testing.

3.8.11 Programmes for sex offenders

Sexual offending continues to be a serious social problem in need of more effective solutions. As indicated in this chapter, sex offenders have a wide-range of economic, psychological and situational motivations. There are various methods which are used to treat sexual offenders. However, any sex offender treatment should typically consist of three principal approaches (Bynum, et al., 2006: 289):

- The cognitive behavioral approach which deals with changing patterns of thinking that are related to sexual offending and changing deviant patterns of arousal
- The psycho-educational approach which emphasizes the offender's concern for the victim and recognition of responsibility for the offense
- The pharmacological approach which is based upon the use of medication to reduce arousal.

These sex offender treatment approaches are not mutually exclusive in practice and a combination of these techniques can be used during treatment. The treatment of sexual offenders should focus on the offender as a total person and not just on his or her act. For example, not only does the rapist have a problem in controlling his or her sexual and aggressive instincts, self-concept and the concept of the society. Whether as an individual or as a member of the group, the sex offender should be encouraged to deal with his/her fears, anxieties, wishes, fantasies and ambitions in order to relieve mental and emotional distress. In so doing, the offender can start to clarify and integrate healthier and more realistic ideas. Like the rapist, the child molester can be similarly treated as a total person who needs to change the direction of his or her sexual impulses and finds satisfaction in his or her job, relationships with other people and leisure time activities. Through supportive therapy, the sexual offender's self-conception may be improved so that the person can function better in all areas of the society.

By teaching the offender to engage in meaningful interactions, healthy recreation and other self-improvement activities, he or she may adapt well in a society. Sex offenders should be held accountable for their behaviors, whether past or present. Programmes for sex offenders can be offered individually or in groups. However, it is difficult to use individual counseling extensively because many of the sex offenders tend to engage in a great deal of denial. Many sexual offenders deny committing their crimes hence, like all inmates, they must be actively involved in productive activities because they will eventually be released into the community. The rationale for dealing with offenders who are in denial is two-fold: (i) if they fail to get treatment they will reoffend, and (ii) if the treatment is offered in a community setting it might save the costs associated with their imprisonment (Silverman, 2001: 178).

When designing the treatment programme for sexual offenders, the offenders' intellectual capacity and motivation should be considered. In addition to self-improvement and work activities assigned to all inmates, a comprehensive sexual offender programme must include specialized treatment activities. A comprehensive sexual offender programme must strive for the following goals:

- Offenders must accept full responsibility for their sexually aggressive behavior and in turn modify the cognitive distortions they use to justify their behaviors
- They should develop empathy towards the victim and understand the consequences of their behavior on the victim
- They must learn their deviant sexual arousal
- They must improve social competence most specifically in areas that are directly related to their sexual offending patterns
- They must develop relapse prevention skills that will in turn provide them with the skills to identify risk factors and develop strategies to deal with them (Silverman, 2001: 176).

Like substance abusers, it is important to conduct assessment on sexual offenders. Through the assessment, information relating to several areas of the offender's life, including the degree of offending as well as other problems in the offender's life that may contribute to his or her behavior is determined. The information obtained during assessment can be grouped as follows:

- Social history which encompasses employment history, hobbies and interests, family relationships, composition and structure and significant life events
- Psychological and social problems which encompass substance abuse, emotional difficulties, history of non-sexual offending and anti-social behavior and psychiatric diagnosis
- Sexual development which encompasses sexual history and experience, attitude towards sex, sexual knowledge and preferences, sexual dysfunction, age of onset of puberty and adjustment to puberty, sexual and intimate relationships and history of sexual victimization
- Sexual patterns of offending which encompass history of sexual offending, attitude towards the victim and the offense, masturbating and sexual fantasies, use of force and physical aggression, willingness to engage in treatment and ability to specify treatment goals

3.8.12 Programmes for mentally disordered offenders

As previously indicated, offenders with mental illnesses cause a significant problem for corrections - in terms of treatment - because their illnesses are often not linked to their criminality. However, the reality is that a substantial number of inmates who enter the correctional system suffer from mental illness. Problems that are often caused by mentally ill offenders include behavior that causes conflict amongst inmates, the inability to understand or follow instructions and self-destructive behavior. Offenders with mental illness require significant resource allocation as well as careful administrative planning and oversight. Failure to do so can cause significant disruption within the correctional system. Well-organized and adequate mental health services, however, contribute to the smooth operation of the correctional system. In the case of *Ruiz v Estelle*, 53 F. Supp. 1265 (S. D. Texas 1980) the court focused on six issues required in order to meet the minimum standards for mental health care within the correctional environment:

- There should be a system to ensure mental health screening for all inmates
- There should be a provision of treatment while inmates are in segregation or special housing units
- There should be a use of the trained mental health staff to ensure individualized treatment planning
- There should be an accurate and confidential medical record system

- There should be a suicide prevention programme
- There should be monitoring for the appropriate use of psychotropic medications.

According to Johnson (1999: 108), mental health care services start at the screening stage. Because of the volume of patients who enter the correctional system and the unplanned presentations of those individuals, it is important that a good initial screening system is in place. Screening, on an individual basis, should be done immediately before offenders are placed in a housing situation without direct staff observation. Only professionals who have been trained in detecting signs of mental disorder should conduct the initial screening process. This is mainly because many offenders, when entering the correctional system, are often angry, upset, frightened, anxious or confused and may be difficult clients to deal with. The main aim of conducting the screening process is not only to identify emergency situations but also to make sure that inmates who might require more extensive interventions are not placed with the general population. After identifying themselves and the purpose of the interview, staff members who are conducting the screening should also assess the inmate's general hygiene and understanding of the situation. The staff member should provide correct orientation as to place, time, and situation to reassure and educate the individual when necessary. While doing this, the staff member should record all the responses to each question. If conducted properly, mental health intake screening will determine the type and immediacy of the need for other mental health services.

Those inmates who require further assessment or evaluation should be placed in an area where there is staff availability and where their needs can be met appropriately. The assessment phase is conducted by a specific staff member who is responsible for interviews, record reviews, physical examinations, laboratory studies, observations and psychological testing, if required. Within the correctional environment, treatment can occur in a variety of settings (Johnson, 1999: 109). As in the case of substance abusers, offenders can move from one level to the other. Outpatient services encompass counseling, consultation, medication management and on-going screening in order to identify any change in treatment needs. Not only is counseling supportive but it also provides a cost-effective mental health intervention that may prevent escalation to a higher level of care. Visits can vary from weekly to every 90 days. In addition, inpatient services

are often established on site in order to avoid discharging them into the community setting and to ensure that adequate security measures are in place.

Individuals may enter the correctional system at any phase of illness or the illness may develop while in custody. Hence, a functional mental health service is crucial to adequately address the impact of imprisonment as well as to identify and manage the mental disorders of a correctional population. However, the success of any care delivery system for mental health services is integrally related to the adequacy of the general medical services available to the general correctional population.

3.8.13 Programmes for female offenders

There has been an increase in the number of female offenders. However, females commit fewer crimes than males. Wilson and Herrstein (1985: 104) point out that “males are five to fifty times (depending on the country) more likely to be arrested as are females”. History indicates that females were considered naturally loving and nurturing, so if they become criminals they were thought to be rebelling against their natural roles and thus neurotic (Warren, 1986: 451). Women pose special needs for the correctional system. Hannah-Moffat (1995: 10) identified four serious limitations for women in correctional systems:

- Within the correctional system, there is a tendency to treat women as if they were from a homogenous group and ignore the differences between women who are keepers and the kept, not the least of which is freedom. For poor women, the correctional system cannot do anything about poverty or reverse abuses in foster homes and all the other challenges that woman suffer before they are incarcerated
- It is a huge mistake to assume that therapeutic approaches, that staff and experts consider to be helpful, are not experienced as oppressive and constraining by women offenders and programmes that emphasize autonomy and choice contradict the realities of incarceration and even if correctional programming is designed for women, the basic structure and purpose of the institution do not change
- Despite moving away from offender punishment, the new correctional system has emphasized the protection of the public and discipline of inmates and this is reflected in the

use of fences, isolation of offenders and other typical constraints available to use with the incarcerated population. The inequality of power amongst inmates and staff makes it possible for the staff to punish inmates and invade their privacy, which blocks the development of supportive relationships in any real sense

- Although many empowerment strategies used by correctional programmes emphasize women's taking responsibility of their problems, they, however, acknowledge wider systematic barriers

Even though they are fewer in numbers, female offenders often have fewer opportunities within the correctional system. The constraints of the correctional structures and the punitive environment make it difficult to empower incarcerated women. In addition, rehabilitation programmes for women tend to be overwhelmingly sex-stereotypes, emphasizing clerical work, food services and cosmetology, cooking and sewing and with less consideration to employable skills. In turn, these programmes reinforce the social role and expectations of women as servants for others, their feelings of dependency and their lowered self-esteem (Walsh, 1992: 218). In addition, female offenders are much more isolated from the outside world than male offenders.

Many of the female offenders are from racial or ethnic minorities who are younger than the general population, have less education and have had troubles since their childhoods. Hence, programmes should be designed and developed based on the reality of their lives, which include recognizing the differences between male and female growth and development. The law requires female offenders to receive equal treatment when it comes to programming and other resources also known as parity (Anderson, 1999: 223). However, parity does not mean sameness but implies equality. In turn, equality is not about providing the same treatment programmes and treatment opportunities for both males and females; it is about providing opportunities that mean the same to each gender.

It is the responsibility of each correctional system to identify and evaluate the special needs services for males and females and then rectify any inequalities. In order to have a successful programme for female offenders, the following criteria should be followed:

- The unique needs of female offenders should be met

- Female perspective should be acknowledged
- Female experience should be supported through positive female role models
- Unique needs and experiences of adolescent females should be addressed
- The contributions made by females, whether young or old, should be recognized
- Female development should be respected
- Young girls and women should be empowered so that they can reach their full potential
- Attitudes that prevent or discourage female offenders to reach their full potential should be eliminated

Walsh (1992: 219) noted that even if female offenders have suffered more abuse and neglect than male offenders, even if they appear to be more atypical of their sex than males are of theirs and even if they have emotional problems because of separation from children and other loved ones, female offenders are better candidates for rehabilitation than male offenders. Three attributes were noted in this regard. Firstly, unlike males, females in general tend to possess more attributes that contribute to a pro-social lifestyle, such as empathy. Females of all ages are inherently more altruistic than males which can be attributed to the influence of genes on sex hormone secretion pattern. In addition, there is greater decency amongst females in interpersonal relationship patterns in facilities. While male facilities are characterized by rape and brutality and where rape is being used to humiliate and dominate as much as to relieve sexual tension, the opposite transpires in female facilities where coerced sexuality is rare. If it develops many females seek for close emotional relationships rather than sexual relationships. Secondly, many female offenders get little or no support for their criminal acts, unlike their male counterparts. For their criminality, many males receive some rewards while females get no accolades for being tough and street smart, as men do. As a result, women find it less comfortable to be associated with deviant behavior and they become less committed to criminal values and are more motivated to change their behavior.

Thirdly, female offenders appear to have better intellectual skills than male offenders. Romig et al. (1989: 63) states that “it is fairly well-established that the female brain matures earlier than the male brain, that girls talk earlier than boys, that there are fewer mentally retarded females than mentally retarded males and, in general, females of all ages do better than males on

standardized tests of verbal skills”. Intellectually, females seem to be in a better position than male offenders and can easily use the information about themselves and their situations to change and become pro-social and independent. Even though females suffer greater social disabilities than their male counterparts and are less well served by the criminal justice system or corrections, specifically, their personal characteristics afford them greater rehabilitation potential.

3.8.14 Programmes for juvenile offenders

Like other categories of special offenders, juveniles also have their unique demands from the correctional system. Different states use different approaches and different strategies in dealing with juvenile offenders. Carney (1979: 226) discussed the factors that have made a contribution to youth crime, these are: family, education, employment and the institutional side of treatment. The influence of a broken family upon young offenders can be easily recognized, and because of the changing role of the family, it clearly does not have the control nor the authority that it once possessed. Currently, we have seen more and more divorces and, as a result, broken homes proliferate. The changing morality and increased mobility have contributed to the weakening of the home and this has serious consequences. It is generally agreed that the restoration of the family can be an effective attack upon delinquency.

Furthermore, the role of education in curbing delinquency is important. This is mainly because we live in a goal-orientated culture where one needs success in a high-paying job, success in obtaining material goods and success in obtaining an education. It becomes difficult for the youth to have the ability to succeed in school and later acquire material goods. As a result they cannot obtain the material goods that they need and turn to crime. Employment, however, is related to educational achievement. It is difficult for a school dropout with a record of delinquency to attain a successful job. However, if serious efforts are made to provide better training and job opportunities for disadvantaged youths, it can be a significant start of an effective fight against delinquency. The institutionalization of dangerous, hard core juvenile delinquents can hardly be referred to as treatment or rehabilitation. Not only are these efforts to protect the public expensive but many offenders who are detained have severe educational

deficiencies, emotional disturbances, mental illness, and security risks which make it difficult for their rehabilitation.

The correctional system must ensure that there are differences when treating young offenders and adult offenders. Such differences are used to justify a separate justice system. Clear and Cole (2000: 399) stated five differences that exist among juveniles and adult offenders:

- Juveniles are young and may easily change: Young offenders can be easily influenced by correctional treatment programmes. Unlike older offenders, juveniles are not as entrenched in negative peer association or they easily give in into criminal activities. Their habits can be easily altered.
- Juveniles have a high rate of desistence: Even though young offenders are more likely to re-offend or fail under community supervision, they have lower failure rates as compared to adults
- Juveniles' families are an important part of their lives: The role of the family is very important for juveniles. This, in turn, makes all the correctional efforts successful because the juvenile is deeply connected to the immediate family in ways that do not characterize adult relationships
- Juveniles are easily influenced by their peers: most juveniles commit their crimes as an influence of groups. This is mainly because young people gather to socialize and a common part of their behavior is testing boundaries and challenging each other to try new things. Because peer relationships are the most important influences on most young people, it becomes difficult for them to resist pressures to engage in group delinquent acts.
- Juveniles have little responsibility to others: within the society, adults, unlike young people, have more productive roles like parenting and working. While young people are typically only responsible for their own individual behavior. This self-responsibility typically concerns other things such as school performance and behavior, compliance with a curfew and developing interpersonal skills.

In contrast, juveniles are appropriate candidates for many rehabilitation programmes that may not work with adult offenders. Not only are their families and peers an important influence in

their lives but they are also a lower risk in comparison to adults. Juveniles are responsible for preparing for adult lives but not yet for succeeding in adult roles.

3.8.15 Programmes for older inmates

As indicated earlier in the chapter, there is an increase in the ageing population within correctional institutions. However, older inmates have previously received little attention from the criminal justice system (Balazs, 1992:225). Although they are still a small proportion of the total inmates population, the number of older inmates is rapidly increasing and as long as they continue to be housed in institutions with inmates of all ages, special programmes must be developed to serve their needs. As mentioned earlier, older inmates have unique physical, social and emotional needs. Not only is the cost of incarcerating elderly offenders high, their physical, mental and medical health care also poses a challenge for correctional administrators. Most older offenders suffer from disabilities, physical impairment and illnesses that are not usually encountered by the youth. They have medical needs that differ from those of the average inmate and they are more likely to develop an illness such as heart diseases, stroke and cancer.

The correctional system must ensure that housing, recreation as well as the rehabilitative and nutritional needs of older people are met. It should be ensured that older inmates are not simply mainstreamed with the overall population because they will be vulnerable to being preyed upon by younger, healthier inmates. In addition, because ageing comes with more restrictive diets, older offenders, in many cases, do not eat the same foods as other inmates. Hence, their programmes must include lifestyle alternatives in exercise, nutritional and medical needs, therapeutic arts and crafts, issues surrounding incarceration and educational programmes. Balazs (1992: 228) states that “the emphasis in most correctional training and placement programs often has been on youthful offenders. As an unfortunate consequences, older offenders experience proportionately greater hardship in the civilian labour force. There is obvious need for special programs emphasizing job placement and community-based treatment to aid older offenders”.

3.8.16 Programmes for long-term offenders

Because of current sentencing, many offenders serve longer sentences. It is the responsibility of the correctional system to develop programmes that are fit for long-term offenders. “Regardless of the minimum amount of time required to qualify as long-term, inmates serving long sentences requires increasing attention simply because there are greater numbers of them” (Silverman, 2001: 181). Not only do these types of offenders cause unique management problems, they also require different programming approaches from short-term offenders. Most long-term offenders will eventually be released to the community after spending their prime years incarcerated. However, it remains a challenge to ensure that they are able to support themselves at the ages of 50, 60 or even 70.

Because of the permanency of their confinement, it is important to consider how long-term offenders perceive the correctional system and its services. Though most people can tolerate unpleasant conditions for short periods of time, the ability to cope with such a situation can change when the conditions have to be endured for a lifetime. It is important to structure the term of confinement for long-term offenders rather than just assign them to jobs or programmes or being idle. Individualized management plans that match each individual’s needs and which provide each inmate with a guide of organizing his or her life according to special activity needs based on that inmate’s psychological and physical health conditions should be developed. The plans must be individualized to ensure that all long-term offenders follow different paths of adjustment and interaction during their inmate career. Like other types of offenders, long-term offenders must also be provided with an opportunity for educational and vocational training which are related to the requirements of a job in an industry and should have promotion possibilities. An option that can be successful is to involve long-term offenders in programmes that require long-term skill development. Another option is to involve long-term offenders in work that they can do alone in their cells like tailoring, legal research and correspondence. If these activities are put in place they can provide long-term offenders with viable and meaningful jobs, while facilitating a more functional facility.

3.8.17 Programmes for physically disabled offenders

Because of the increase in the number of offenders with disabilities in correctional institutions, there is a need to govern their care. It is important for the correctional system to ensure that all of their programmes, activities and services are accessible to people with disabilities. Rosefield (1992: 111) mentioned the necessities in meeting the needs of disabled offenders:

- **Custody and security:** Officials should be taught how to properly strip search a wheelchair-bound paraplegic and disassemble wheelchairs. When officials decide to use leg-irons, waist chains across colostomy bags and even handcuffs for those on crunches, they have to consult the medical personnel
- **Personal safety:** Disabled inmates have to be protected from other inmates as well as, particularly in cases of emergency. Building evacuation planning and emergency response must include special consideration for the disabled.
- **Programmes:** One of the major challenges, as mentioned earlier, is providing meaningful work, study and recreational opportunities. Too often no attempt is made to put these inmates to work and they have been forced to sit back and watch other inmates earn incentive wages and days off their sentences without an opportunity to do likewise
- **Medical services:** Another issue is helping with activities of daily living which includes dressing, bathing, feeding and transportation. Ideally, medical staff such as nurses provide all such assistance. However, in the real world of limited budgets and insufficient staff, inmates are frequently used for these activities. Any inmate involvement in daily living assistance must be closely monitored by professional staff to ensure that inmates are properly trained and that they do not exploit those whom they are assigned to assist
- **Housing:** Even though their numbers are few, their needs are however great, it is the responsibility of the correctional system to be prepared to accommodate disabled offenders

3.9 SUMMARY

Rehabilitation as one of the objectives of imprisonment must always be considered during the treatment of offenders. By finding and treating those personality aspects which led an offender to commit crime, the offender can be prevented from committing further crimes. Offenders must be

provided with essential programmes aimed at their rehabilitation while they are detained. Rehabilitation remains one of the most important purposes of sending a person to a correctional centre. This is mainly attributable to all the programmes that are available to the offenders while they are incarcerated so that they can redeem themselves and return to their communities. Rehabilitation comprises of education, skills training, sport, recreation, arts and culture opportunities, health care and psychological treatment, maintenance of family and community links, a safe and healthy detention environment and post release support to ensure that the offender is rehabilitated to prevent him or her from going out worse than he or she was when first coming into detention. This chapter outlined the various programmes offered to offenders which are aimed at their rehabilitation.

CHAPTER 4

THE ROLE OF DETERRENCE AS A CRIME PREVENTION TOOL

“It is better to prevent crimes than to punish them”

Beccaria

4.1 INTRODUCTION

Preventing future criminal activities is probably the principal aim of any criminal sanction. Even though such decisions are made by legislators, sentencing judges and parole boards with virtually no knowledge and little analysis of the future effect of their actions. Deterrence is a function of the declaration of some harm, loss, deprivation or pain that will follow non-compliance with command. The central concept of deterrence is based on the concept of a threat which involves a threatening agent and a threatened audience. In this chapter, the concept of deterrence and its function in particular as the motive and justification for crime control will be analysed. It will be determined whether deterrence can be an effective tool for crime prevention. The first part of the chapter will provide the background on deterrence and how it came to be used as a means of controlling crime. The chapter will also differentiate between two types of deterrence, i.e. individual and general deterrence, and the way in which they can both be applied to achieve the objectives of deterrence. In order to understand the role of deterrence in crime prevention, one has to understand the prerequisites that should be in place for it to work; hence, the chapter will also provide a discussion on such prerequisites.

4.2 THE THEORY OF DETERRENCE

According to Silverman (2001: 22) deterrence as a means of controlling crime dates back to over 200 years ago. Cesaria Becaria and Jeremy Bentham made significant contributions to the development of the theory of deterrence (Reid, 2006: 77). In his 1764 essay, “On crime and punishments”, Becaria argued that the prevention of crime was to be accomplished through the mechanism of deterrence, which was founded upon certain assumptions regarding human nature (Brown et al., 2010: 142). He further noted that deterrence employs threats of punishment to influence behaviour. In deterrence, it is not only assumed that people are rational but also that

their behaviour is a product of free will and that their goal is to increase pleasure and/or reduce pain. It is based on the assumption that there is a significantly large population of individuals who harbour criminal motivation for a variety of reasons, be it economic needs or frustrations. However, people with the inclination towards experiencing cross-pressures, while they may badly want to steal, cheat or even kill, also want to escape the burden of criminal sanctions. In deterrence, individuals are allowed to engage in a rational cost-benefit analysis of the risks and rewards associated with certain behaviours. As a result, people will not act impulsively out of the need for money or as a result of any social or psychological problem. People will only engage in acts after they have carefully and rationally analysed the costs (risks) and benefits (rewards) thereof. People will then act impulsively, out of the need for money or as a result of any social or psychological problem.

Beccaria outlined the variables that are still considered the basis for research on deterrence, i.e., the certainty of punishment; the severity of punishment; and the swiftness of punishment (Livingston, 1996: 501). Crime prevention can be achieved through proper manipulation of these factors. Failure to apply these principles in a consistent manner will lead to a rise in crime. In terms of the certainty of punishment, Beccaria stated that as the perceived certainty of punishment increases, the probability of norm violations declines. In terms of the severity of punishment, it was determined that the severity of punishment was justifiable and it accomplished the desired deterrent effect but only up to a certain level. Even though the severity of punishment was given less recognition than the certainty of punishment, it was concluded that the certainty of punishment - even if it is moderate - will always make a stronger impression than the fear of another which is more terrible but combined with the hope of exemption from punishment. In terms of the swiftness of punishment, it was determined that as the punishment response becomes swift, the probability of norm violations decreases. Thus, if the punishment is more certain, swift and severe for a criminal act, then people will refrain from committing such a criminal act.

Like Beccaria, Bentham is more widely recognised for his contribution as a criminal reformer than as a theoretician. After identifying inconsistencies and cruelties in the administration of justice in his time, Bentham responded by advocating that the punishment of offenders should

not be guided by retribution but rather by the aim of preventing crime. He further noted that actions should be judged according to whether they contribute to happiness and benefit humans and, because criminal acts do not contribute to any happiness, they should be prevented (Brown et al., 1998: 182).

Although deterrence has various definitions, it is however based on the idea that a person is prevented from doing certain things because he or she knows the severe consequences that might be suffered from taking such actions (Levine et.al, 1980: 353). In deterrence, punishment is used to prevent the criminal and others from committing the same offense. History indicates that earlier modes of punishment were, by and large, deterrent in nature by ensuring that people refrain from committing crimes because of the unpleasant punishment that will follow the commission of such offenses (Paranjape, 2005: 204). Because of the fear associated with it, punishment increases the chance of people complying with the law. Unlike the case of retribution, where the aim is to inflict pain that offenders might deserve because of their past actions, in deterrence the aim is for punishment to affect future actions.

4.3 DETERRENCE AND THE CRIMINAL JUSTICE SYSTEM

As mentioned in Chapter 2, the criminal justice system is a system developed by democratic governments to preserve the peace through the apprehension of criminals and the prevention of crime. In general, the criminal justice system includes those agencies that are involved in the enforcement, prosecution, defense, adjudication, punishment and rehabilitation processes in criminal law. The criminal justice system is itself massive in cost, size and complexity. Not only does the criminal justice system of any country aim to reduce the incidences of criminal acts amongst its citizens but also to assure the equal protection, under law, of the rights of victims and the accused and to increase the efficiency, effectiveness and productivity of all those in the system. However, it should be noted that the criminal justice system alone cannot prevent crime; hence, the responsibility is shared by the family, schools, churches and so on.

Deterrence focuses on the circumstances in which the threat of punishment prevents crime. Conklin (2010: 358) noted a problem of simultaneity. He stated that sanctions might reduce

crime but the crime rate also affects the sanctions imposed by the criminal justice system. Though an inverse relationship between crime rates and the certainty of punishment might exist, because the threat of sanctions reduces crime, it could also exist because a high crime rate reduces the certainty of sanctions. Therefore, it can be concluded that the crime rate could affect the certainty of punishment as much as the certainty of punishment affects crime.

A 1999 study, by the Institute of Criminology at Cambridge University, which was commissioned by the British Home Office to conduct research on major studies of deterrence, concluded that while reviewing macro-level studies that examine the offense rates of a specific population, the researchers found that an increased certainty of apprehension and punishment was associated with declining crime rates. Another study by Nagin and Pogarsky (2001) concluded that “punishment certainty is far more consistently found to deter crime than punishment severity, and the extra-legal consequences of crime scene at least as great a deterrent as the legal consequences”. In the ensuing sections, the relationship between crime deterrence and the components of the criminal justice system will be explored.

4.3.1 The relationship between the police and crime deterrence

Police have the responsibility to enforce criminal laws, prevent criminal activity, investigate criminal offences, apprehend offenders and participate in court proceedings. Conklin (2010: 358) asked three questions with regard to police and crime deterrence: Do cities with larger police forces have less crime? What is the association between the risk of arrest and crime rate? and, What are the tactics that are used by the police that are more likely to reduce crime?

Does increasing the number of police reduce crime? Various researchers have reached different conclusions as to whether an increase in the number of police leads to a decrease in crime rates or not. According to Kovandzic and Sloan (2002: 67), a large body of research has explored the police–crime relationship due to the substantive importance of the question of whether police levels affect crime since the 1970s. In a 1997 study by Steven Levitt where he used the timing of the elections to examine crime rates, he found that a marginal increase in the police force leads to lower crime rates. Similarly, a study by Di Tella and Schargorodosky (2004) examined the effects of more policing on crimes following a terrorist attack in Buenos

Aires, Argentina. As a result of the attack, Jews and Muslims were given 24 hour police protection and the researchers focused on motor vehicle thefts per block before and after the decision to provide more police protection. The study concluded that blocks with more police protection had 75% fewer car thefts than other blocks with less police protection. In addition, after collecting data over 20 years in 56 US cities, Marvell and Moody (1996) found that an increase in the number of police officers does result in crime reduction in subsequent years. They further discovered that the hiring of police officers in urban areas reduces crime far more than in small towns.

However, there have been other studies that found that within the range of officers that exist per capita, cities with larger police forces do not have lower crime rates than cities with smaller police forces. For this reason, Eck and Maguire (2000: 214) concluded that there is a lack of a consistent body of evidence indicating that hiring more police is an effective method for reducing violent crimes. Most studies found little support for the notion that increased police levels affect crime even though some support for the notion that increased crime levels lead to increased police levels was found. The results of these studies were found to be consistent regardless of the study design, time period analysed, sample size, measure used for police levels, unit of analysis, type of crime or the data analytic procedures. Nevertheless, Conklin (2010: 359) concluded that large variations in the number of police officers per capita might affect crime rates in certain situations and, at the end of the spectrum, the presence of very few police officers might cause crime rates to rise.

How is the risk of arrest associated with the crime rate? The public in general believes that the only way in which the police deter crimes is through arrest even though the pace at which the police solve crimes is quite slow. Because they are expensive in nature and occur in private spaces, which police have little or no access to, violent crimes are difficult to deter even though arrest rates are high in this category as compared to other categories such as property crimes. Unlike violent crimes, property crimes are more likely to involve the consideration of some risks and rewards. However, they are not solved frequently and - like violent - crimes they are not easily deterred.

Various studies have found that the more crimes the police solve, the fewer crimes of that sort occur. In a 1974 study by Tittle and Rowe, where they examined the deterrent effects of certainty of punishment on offence rates, the following was examined: (i) the effect of arrest clearance rates on offence rates, (ii) the certainty-rate relationship for smaller and presumably more homogenous geographic units, and (iii) the possible validity of the certainty-rate relationship by controlling a number of socio-economic and demographic factors associated with crime. They found that negative correlations exist between clearance rates and total index crime rates in two sets of data which was consistent with a deterrence hypothesis that certainty of punishment will inhibit potential offenders. Wilson and Boland (1976), Yu and Liaska (1993) and Logan (1975) also had similar findings.

A study by Greenberg and Kessler (1982), however, found no consistent evidence that higher clearance rates reduce crime rates. These findings of no arrest rate deterrent effects, in a temporal sequence design in big cities, throws doubt on a simple claim of general deterrence.

What are the tactics used by police that are more likely to reduce crime? The presence of a higher number of police patrol cars increases the area that the police can cover and increased mobility enhances the likelihood that officers will be at the crime scene when needed. However, patrol cars reduce police access to the public thereby cutting-off a strong source of information that is useful in terms of maintaining order, preventing crime and arresting suspects.

Similar to the size of the police force and the risk of arrest, research has also been conducted on police tactics that are more likely to reduce crime. One famous study, in this regard, is that of Kelling et al. (1974); this study sought to determine whether police patrol had a deterrent effect in Kansas City between 1972 and 1973. The study indicated that variations in levels of motor patrolling amongst three groups of five patrol beats did not affect crime or citizen perceptions (meaning that there is no difference in crime by number of police cars assigned). Even though the study received heavy criticism based on its methodology and statistical grounds, it has however gained widespread acceptance.

In the Kansas City experiment, the displacement effect was not found. The displacement effect implies “a change in the pattern of crime without a reduction in the total amount of crime” (Conklin, 2010: 360). Crime, in general, can be displaced from one target to another, one area to another or from one kind of offense to another. In addition, crime displacement may also imply a change in a criminal’s tactics and the changes in the time of committing crimes.

Because of the need for contact between the police and the people that they serve, many law enforcement agencies have introduced community policing forums based on the idea that officers in patrol cars are too isolated from the community. Masiloane (2004: 2) defined community policing as “a police department wide philosophy of full services, personalised and decentralised policing, where citizens feel empowered to work in proactive partnerships with the police at solving the problems of crime, disorder and quality of life”. In essence, community policing is collaboration between the police and the community that identifies and solves community problems. Community policing has far reaching implications because the police are no longer the sole guardians of law and order as all members of the community became active allies in the effort to ensure the safety and quality of their neighbourhoods. The expanded outlook on crime control and prevention, the new emphasis on making community members active participants in the process of problem-solving and the patrol officers’ crucial role in community policing requires intense changes within the police organisation. The working together of the police and neighbourhood patrol officers helps community members assemble support and resources to solve problems and enhance their quality of life. Through their participation, community members are able to voice their concerns, contribute advice and take action to address their concerns.

However, such partnerships do not come easily as they require the energy, creativity, understanding and patience of all the parties involved. There also has to be trust between the police and the community because without trust between the two effective policing is impossible. Nevertheless, if crime is to be deterred and more vital neighbourhoods are to be created, such a relationship is essential. The end goal of community policing is to reduce crime and disorder by carefully examining the characteristics of problems in neighbourhoods, thereby applying appropriate measures.

Problem-oriented policing, however, implies that the police should deal with the underlying conditions that generate crime, share these with community policing and emphasise the cooperation with citizens in order to attack local crime problems. According to the Bureau of Justice Assistance (1994: 17), the concept of problem-oriented policing is based on the assumption that it is possible to reduce crime and disorder in a small geographical area simply by carefully studying the characteristics of problems in the area and then applying the appropriate resources. The mere goal is to solve specific problems rather than merely establish good relations with the community. Because people tend to make decisions based on the physical and social characteristics of the area, manipulating these factors will lead people to be less inclined to act in an offensive manner.

4.3.2 The relationship between the courts and crime deterrence

Although the court system differs from one country to another, the importance of the courts in crime deterrence cannot go unnoticed. When discussing the court one has to bear in mind that it is not an investigative agency, a punishing agency, a rehabilitation agency or an educational agency but just one of the several steps in the criminal justice system. The court has been designed to afford a fair trial, according to the rules imposed by legislature. To a large extent, the court has the responsibility to deal with the heavy caseload and still afford all the protection guaranteed by the constitution and judicial processes (Hoffius, 1976: 18). Judges have the responsibilities of imposing sentences. When sentencing, judges have to consider the following: promote respect for the law; to reflect on the seriousness of the offense; to provide just punishment for the offense; **to deter future criminal conducts**; to protect the public from the offender and to recommend rehabilitation programmes to the offender (Champion, 2008: 3). Sentencing is not just to ensure punishment that fits the crime but it also functions as a deterrent to future criminal activities.

Reynolds (1997) stated that the rate of serious crime decreased when the punishment expected by criminals increased. Expected punishment is the function of the probabilities of arrest, conviction after such arrest and being sentenced to imprisonment after conviction as well as the time spent

by those who were sentenced to imprisonment. The statement that increased expected punishment caused serious crime to decrease is in line with the findings mentioned earlier that, for punishment to be effective, it should be certain, swift and severe. It is at the sentencing level that the balance between reform and deterrence becomes most difficult.

In addition, Anderson's (1997) study entitled "The mystery of the falling crime rate" revealed that earlier intervention by the courts has an impact on crime deterrence. If offenders can be sentenced for drug-treatment programmes, community services, electronic monitoring and work release programmes, crime rates may decrease. The goal of this approach is to break the cycle of crime as early as possible while criminals are still committing relatively minor crimes and to show intent to react repeatedly to those offenses. If courts can recommend meaningful sanctions and treatment requirement after the first or second minor offense, much crime could be avoided.

4.3.4 The relationship between the correctional system and crime deterrence

In determining the relationship between the correctional system and crime deterrence, one has to ask whether the threat of facing longer sentences for repeat offences discourages offenders from committing additional crimes. The answer to this question will be that some offenders will find the threat of a longer sentence for future crimes unacceptable while others would obviously not be deterred by any threat of penalty from future crimes. Therefore, it remains difficult to estimate the effectiveness of imprisonment as deterrence to reoffending based on the character of the offender and his or her reaction to being convicted and punished rather than the type of sentences he or she receives.

No matter how dangerous the criminals might be, citizens wish to be protected from them; hence, sentencing them to imprisonment effectively removes them from society. Imprisonment certainly deters the offender from committing crimes against the society at large while he or she is incarcerated. However, whether imprisonment deters the individual offender from re-offending depends on the success of treatment programmes in rehabilitating and resocialising the offender (Kaufman, 1973: 346). Offenders should not be merely warehoused, they should rather be offered educational and vocational programmes. Such programmes are supposed to correct the behaviour of offenders and turn them into law-abiding citizens, respectful of the rights of others.

Imprisonment, because it is both humiliating and unpleasant to one's liberty, should act as a deterrent to the person being incarcerated and others (Becker, 1968: 178). The ideal belief is that sending a person to prison for being caught engaging in certain criminal activities should reduce the frequency of such activity. Both the prospect of getting caught and the possibility of putting them behind bars are supposed to deter forward-looking, rational potential offenders from criminal activity while encouraging more constructive pursuits. Moreover, the deterrence provided by imprisonment is also effective for many people because the stigma attached to it affects their personal and professional lives and the idea of imprisonment itself is enough to deter them from committing crime in the first place or to prevent recidivism after release.

However, there are five negative aspects related to the relationship between imprisonment and the deterrence theory (Murphy, 2010):

- Deterrence theory assumes that people are able to make rational decisions on whether or not to commit crime
- Imprisonment itself fails to facilitate the changes on an offender's life or attitude in order to prevent them from returning to criminal activity
- Offenders can leave in a worse and more vulnerable situation than when they started with their sentence
- There are those who feel much better incarcerated than outside
- For some people the social stigma related to imprisonment may be non-existent and for them being sentenced to imprisonment may be seen as a positive event or a rite of passage.

4.4 TYPES OF DETERRENCE

The fear of punishment, without doubt, serves to deter most people from committing crimes. Deterrence helps prevent future criminal activities because of the consequences suffered by convicted offenders. It is made up of two types, namely special deterrence and general deterrence.

4.4.1 Special deterrence

Snarr (1996: 59) explains that special deterrence applies to the offender who is being punished for the crimes he or she committed in a sense that the punishment will make him or her stay away from criminal activities because of bad experiences with previous offences. With special deterrence, the underlying principle is that whoever experiences the suffering and unpleasantness of punishment will refrain from committing future criminal activities. According to Ntshangase (1996: 30), special deterrence operates on the notion of “once bitten twice shy”. As a means of protecting the society, individual deterrence occurs after the offender has been apprehended, prosecuted and convicted.

There are three preventive descriptions of deterrence punishment to the special offender (Bentham, 1988: 53):

- The offender’s physical power may be taken away either through incarceration or capital punishment
- The infliction of punishment may be meant to take away the desire to offend, which results in rehabilitation
- Through intimidation or fear the offender may refrain from re-offending

Special deterrence works in two ways: (i) it teaches an offender a lesson thereby reducing the chances that they will commit another crime after being released; (ii) it prevents offenders from committing crime by keeping them in detention (Levine et.al 1986: 478). People who have been subjected to legal consequences, whether large or small, will obviously react differently to legal threats of any kind and more especially those that led to the previous punishment. The difference between the reactions of previously punished offenders and those who have never been punished stems from the following:

- Offenders who are arrested and punished are a special high-risk group especially those who are considered serious offenders, independent of their previous experiences with the legal system
- The fact that the experience of punishment brings about changes in attitudes, expectations or even status

- A mixture of both (Zimring, 1971: 97).

When discussing special deterrence it is important to first understand the fact that apprehended offenders are, in general, a special group regardless of the effect of apprehension and punishment. If half of the offenders who have been convicted of murder, for example, are arrested for the same offense for the second time while less than 1% of all members of the threatened audience are ever apprehended, some might be tempted to conclude that the apprehension and punishment of killers does not deter them from further offenses. Because of the fact that those subjected to punishment are a special high-risk group of potential future offenders establishes the importance of studying the reactions of the group to punishment and the threat of punishment. This is mainly because those offenders who have been previously exposed to punishment will be responsible for a far larger per capita amount of crime than the rest of the population. However, the share of crime that can be attributed to previously punished individuals will vary with the type of crime.

In addition, the punishment of offenders can go as far as changing the attitudes of offenders. Such changes will affect the offenders' tendency to commit crimes in the near future. While some of these changes are closely related to the effect of threat and while others are not, they are however all important to comprehending the role of special deterrence in crime prevention. Changes that are related to the condition of future criminality as a result of the effects of punishment are as follows (Zimring, 1971: 99):

- Changes in the offenders' attitude towards punishment
- Changes in the offenders' attitudes towards threatened behaviour
- Changes in the offenders' attitude towards the society
- Changes in the offenders' ability to be able to live within the law.
- **Changes in offenders' attitude towards punishment:** Lewin (1951: 135) found that punishment may produce changes in attitudes towards punishment that not only increase but also decrease the degree to which punishment is worth avoiding by those who experienced it.

These results are related to the fact that punishment itself leads to an increase in the degree of reality of punishment by familiarising the subject with the sting of unpleasantness through firsthand experience. Through this personal experience, the unpleasantness of punishment is brought closer to the potential offender than the threat which develops through hearsay. Such an effect of punishment could be the result of the prospect of a particular punishment losing its uniqueness to the already punished subject in some instances. However, there is not much research into the effects of punishment on attitudes towards the unpleasantness of threatened consequences.

- **Changes in the offender's attitudes towards the threatened behaviour:** When members of the community consider punishment as a possibility if they commit crime than experiencing it first hand, it is not the same as committing the threatened offense. The increased reality of punishment experienced may lead to changes in the subject's evaluation of the behaviour that has led to his or her misconduct once the punishment is administered. By simply indicating to the offender that his or her conduct was wrong, the experience of punishment serves as an eye-opener. This will in turn not be repeated. Because of the unpleasantness of the punishment experience, it will be clearer to the offender that the offense that was committed has its own disadvantages especially if such punishment occurs soon after commission of the threatened behaviour. However, the experience of punishment may cause offenders to experience conflict about the judgement of their behaviour and may lead them to believe that their act is worth the punishment. Through such rationalisation, the threatened behaviour may acquire a value to subjects higher than it had prior to punishment (Zimring, 1971: 101).

Whether experiencing more severe punishment would lead to a greater degree of realisation by which the offender would conclude that it was worth it or whether the whole process of rationalisation would break down where the unpleasantness suffered is too great to permit a realistic judgment that the act could be worth the punishment is not clear. In addition, those offenders who experienced punishment can always find ways to rationalise without them having to change their opinion of the value of the threatened behaviour because those who have been apprehended and punished before know that committing any offense leads to apprehension.

The way the penalty structures have been developed in the criminal process makes it difficult for most punished offenders to even think that criminal conduct is worth the punishment. However, whether the best punishment will lead to significant changes in attitude in all cases is not clear because the prospects for determining the attractiveness of criminal alternatives are probably best when the consequences of apprehension activate potential moral judgements in the offender and where drives towards the threatened behaviour are initially weak. Changes in the offender's attitude are weak when the reality of punishment is outperformed by the drive to commit an offense.

- **Changes in the offenders' attitude towards the society:** Changes in offenders' attitudes towards their society is imminent as a result of the punishment experienced. Such possibility is widely recognised in the correctional system hence rehabilitation has been adopted as one of the goals of corrections. In rehabilitation, the idea is that some forms of threatened consequences afford the opportunity to align the values of their subjects by discouraging commitment to antisocial values and encouraging loyalty to prevailing social norms. However, rehabilitation as a result of punishment differs extensively from punishment as a means of discouraging criminal activity in the mind of the offender. This is because rehabilitation not only discourages commitment to antisocial values but also involves the transmission of positive social norms which would tend to reduce criminals independent of the negative value of punishment.

Because the punishment process often generates hostility on the part of the offender it is also possible that the experience will lead to less favourable attitudes towards social norms. The process also creates some pressure to reject prevailing norms in order to protect self-esteem when punishment has conveyed a rejection of the offender by the social order. Because of the diversity of offenders undergoing imprisonment, the net result of the punishment experience of an offender might be the opposite of what it sought to be.

- **Changes in the offenders' ability to be able to live within the law:** Offenders' ability to live comfortably within the law will be affected by some types of threatened consequences. Doors may be shut on offenders as a result of the social stigma associated with the punishment imposed on offenders. In some instances, rehabilitation programmes such as job training can make the punished offender function more effectively after serving his or her sentence.

It is difficult to link the changes brought about by punishment with the effect of threats on future conduct. If rehabilitation reduces recidivism because many former offenders wish to conform to prevailing social norms, it would be unwise to attribute this improvement wholly to greater sensitivity to threats or to expect that punishment per se is responsible for the decrease in subsequent criminality. Other possible effects of punishment on criminality, such as changes in the offender's attitude towards threatened consequences, will be the result of changes in patterns of threat response (Zimring, 1971: 104).

Studying the future criminality amongst punished offenders seems to be the only method that can be used effectively to test punishment as a special deterrence, even though such tests will show the results not only of special deterrence but of the many other positive and negative influences that punishment might have on future criminality. This is mainly because a particular form of punishment will produce a mix of effects. In conclusion, the only method that seems to be effective in testing punishment as a special deterrent is the study of punished offenders' future criminality. However, such tests will not only show the results of special deterrence but also of many other positive and negative influences that punishment might have on the future criminality of the punished offender because a particular form of punishment will produce a mix of effects.

4.4.2 General deterrence

General deterrence occurs when individuals other than those who are punished avoid any criminal activity because they are afraid of the actions that might be taken against them. The essence of general deterrence is the use of punishment against the apprehended criminals to serve as an example to show other individuals the consequences of failing to comply with the law. The miserable fate of those who fail at crime threatens the other individuals and keeps them in line. Unlike individual deterrence, general deterrence is aimed at the whole community.

In general deterrence, three sub-categories must be distinguished, i.e. absolute, partial and marginal deterrence. With absolute deterrence the key idea is total abstinence as it occurs when a particular crime is forgone altogether out of fear of the legal actions against the offender. In

partial deterrence, however, crime is not totally prevented but its damage is scaled down while marginal deterrence is the additional crime which is prevented by some stiffening of criminal justice operations, for example, strengthening the police force, eliminating parole or restoring capital punishment amongst others.

Within the theory of general deterrence it is assumed that the rate of crime will decrease when the probability of punishment increases. The concept of general deterrence has been widely used in determining the effectiveness of legal sanctions in crime control. However, there is no formalised theory of general deterrence which is universally accepted as 'complete and definitive' (Williams and Hawkins, 1986: 546). An essential mechanism of deterrence theory is a coherent view of the psychological process that an individual undergoes before committing crime. In addition, the theory should not only take into consideration the perceptual linkages that lead to general deterrence but also other preventative consequences of criminal sanctions.

General deterrence works best when potential offenders are aware of the previous punishments given to offenders, so punishing someone quietly with no one else knowing would have little or no general effect. Brown et al. (1998: 192) identify publicity as an essential component of the process of general deterrence because the wider the dissemination of sanctioning information, the greater the potential impact of that information. Publicity that is designed to deter unlawful conduct usually takes the form of media campaigns or informal word-of-mouth which may communicate accurate information regarding the sanctioning process or utilise distorted messages designed to serve as scare tactics. Within the theory of general deterrence, it is assumed that crime rates are influenced and controlled by the threat of criminal punishment. In this theory, if people fear being apprehended and punished, they will stay away from any criminal conduct. Therefore, an inverse relationship should exist between crime rates and the fear of legal sanctions. For example, if the punishment for a crime is increased, the criminal justice system's effectiveness and efficiency are improved, then the number of people willing to risk committing crime should decline because of the fear of future punishments.

In addition, the factors of severity, certainty and the speed of punishment may also influence one another in the process of general deterrence (Siegel, 2009: 106). For example, if robbery is

punished severely but few robbers are ever caught or undergo punishment, then the severity of the punishment for robbery will probably not deter people from robbing. However, if certainty of apprehension and conviction for robbery is increased by means of modern technology, more efficient police work or some other factor, then even minor punishment might deter the potential robber. Most deterrence theorists tend to believe that the certainty of punishment has more value than the severity of punishment and the speed of punishment. Nevertheless, all three components of deterrence are important and a balance should always be maintained because it would be disastrous to emphasise one component at the expense of the others.

When analysing general deterrence, some experts believe that the main aim of the law and the criminal justice system is to create a threat system which deters lawbreakers through fear. However, there seems to be no effective instrument to determine the relationship between crime rates and deterrent measures. There is little evidence that the fear of apprehension and punishment alone can reduce crime rates, despite efforts to punish criminals and make them fear crime. As a result, Siegel (2010: 113) offered the following reasons for such a discrepancy:

- **Rationality:** Within the deterrence theory an offender is assumed to be rational in such a way that he or she weighs the costs and benefits of a criminal act before deciding on a course of action. Because many criminals are desperate people, it makes it difficult for them to make proper judgments. In other instances, offenders are under the influence of drugs or alcohol, some suffer from mental illness while others suffer from the combination of both which makes it difficult for them to reason and calculate their moves.
- **Need:** Many offenders lack the educational and life skills necessary for them to earn a decent living. As a result, the fear of punishment might fail as a deterrent of criminal activities because such a state requires desperate actions. The threat of formal sanctions seems to be irrelevant amongst poor, high-risk groups living in economically depressed neighbourhoods. This situation mostly affects the young people in these areas because they have less to lose as they have few opportunities. Not only do these young people have fewer opportunities, they also have little attachment to social institutions such as schools or families. In their environment, their role models end up being a drug-dealer in their neighbourhood who commits crime without getting caught or punished.

- Greed: Some offenders may view deterrent effects as being ineffective because they believe the profits from crime are worth the risk of punishment as it may be their only significant chance for gain or profit. In their 1999 study, Piquero and Rengert identified and interviewed active residential burglars to examine how they take into consideration the perceptions of risks and rewards before committing a burglary. After employing a series of estimation techniques which have never been used before, they found that offenders are influenced by the perceptions of both risk and rewards, though the latter are a stronger predictor of the decision to engage in a residential burglary. Although perceived risk of punishment may deter some potential and active criminal offenders, this will only happen if they doubt that they can gain more from committing crimes. Greed encourages law violators to overestimate the rewards of crime.
- Misconception: Within the general deterrence theory it is assumed that if the criminal justice system is effective and efficient, then people will be deterred from committing crimes because they perceive an increased risk of apprehension and punishment. If more people are apprehended, convicted and then sentenced to imprisonment, the perception of punishment and its threat should increase, causing a greater deterrent effect. However, that is not the case with criminals. The scope of their assessments may be limited to their immediate surroundings. If criminals see cops making arrests on the streets, they may be apprehensive, but their fear might cause them to shift their location rather than deterring future criminal activities. Criminals prefer seeing or hearing what they want to see or hear. They will rather listen to their friends bragging about big scores and profitable deals than information showing that arrest rates are up.
- Compulsion: It should always be considered that not all offenders are equal and that only a relatively small group of chronic offenders commit a significant percentage of all serious crimes. Psychologists believe that this group of offenders suffers from an inherited emotional state that makes them both incapable of fearing punishment and less likely to approach the consequences of crime. The heightened emotional state dictates the deterrent effects of the law.

4.5 THE PREREQUISITES OF DETERRENCE

For deterrence to work the following five factors must be satisfied, namely:

- There must be adequate communication of threats to the targeted groups
- Punishment must be of sufficient severity to make it frightening
- The criminal population must have a rational aversion to legal threats that makes them responsible to deterrence attempts
- There must be swift administration of punishment (Levine et al, 1980: 358).

4.5.1 Adequate communication of threats

Most people refrain from crime because of the fear of getting caught and receiving severe punishment. While the objective reality about such dangers no doubt affects perceptions, neither efficient nor harsh law enforcement will deter those contemplating crimes if they are not aware of penal sanctions that come with it or if they are ignorant about the actual risks. Because of the lack of public knowledge about the details of the penal code, threats must be communicated, whether formally or informally, for them to be effective.

Very often people are not sure what is legal and what is illegal. Even worse, people may not have accurate knowledge about the credibility of legal threats – the chances of being caught and being convicted. Because of the lack of accurate data regarding the chances of getting caught, even some crime analysts have trouble determining the odds of getting caught. As a result, the average person may not get such information. There are also indications that some people might break the law because they underestimate their personal chances of arrest. Such optimism causes them to miscalculate what the cost to them will be in relation to the benefits received; hence, they may attempt to commit crimes even when it is more risky than they think. Moreover, since the actual chances of success are fairly good for many crimes, this irrationality caused by imperfect information may nonetheless lead to more successes than failures (Levine et al, 1980: 359).

Lack of information about the possibility of arrest would seem to be problematic on all attempts at deterrence but, in fact, a high degree of public knowledge about potential sanctions may not be essential. Firstly, this is mainly attributed to the fact that those who have committed crime or are planning to do so generally have far better knowledge of criminal law than the public at large. Secondly, special communication can be directed at the class of potential offenders to publicise, emphasise and dramatise the consequences of violations.

4.5.2 Certainty of threats

Crime would drop if there were 100% certainty that everyone who commits a crime would be caught, convicted and detained. However, because there is a lack of information regarding such apprehension and the punishment received, certainty is a probabilistic notion. People who often commit crimes do not even think of their chances of getting caught especially those who are seeking material gain. These include muggers, embezzlers and price fixers who spend endless time plotting how to get away with their crimes. Deterrence depends on closing the law enforcement net tightly enough around the criminal population so that the risk does not justify the probable payoff for any criminal activity.

The importance of certainty in making deterrence effective is suggested by several studies that show people's perceptions of risk relates to their self-reported criminality. Nevertheless, deterrence often fails because of the ease of committing many crimes. Problems with the criminal justice system give criminals tremendous advantage to engage in criminal activities, i.e. invulnerability to arrest, irregular imposition of penal sanctions and legal immunity (Levine et al, 1980: 365).

- **Invulnerability to arrest:** Police often find it difficult to arrest criminals hence more often the number of crime reported are much higher than the number of arrests. Apprehension ratios are determined by comparing arrests by police with a rough approximation of total crime based on police reports and victimisation surveys which uncover much unreported crime. For more criminal activities success is far more likely than failure and for crimes such as burglary the chances of being caught are quite remote. Only crimes that do not have direct victims and that are routinely committed by a large part of the society can be easily executed

successfully. The fact that police receive very little information about crimes until up to the stage where they have occurred leads to low arrests. Police are unlikely to stop crime while in progress; hence, studies indicate that only 1% of all arrests result from the police witnessing criminal acts (Reiss, 1971: 100). Frequently, when the police arrive at the crime scene the criminal has already departed. In addition, victims have little input when it comes to solving crimes especially in cases which involve interpersonal violence such as rape and assault where the victim and the criminal know each other slightly, only 17% of the victims can make positive identification of the criminal. Although robbery victims have a chance to observe the criminal directly, only 7% of them can make a positive identification of the criminal. This is mainly because the average robbery takes between 60 and 70 seconds and they only get a glimpse of the criminal. Furthermore, it is even worse to identify the criminal when the victim was not present. For example, for thefts only 1% can be identified, for burglaries only 2% and for vehicle theft only 5%; hence, the police find it difficult to solve such crimes. Although the police may act with the outmost efficiency, dedication and aggressiveness they are incapable of arresting a very high proportion of criminals.

- **Irregular imposition of penal sanctions:** Because of the courts' workload, only a small percentage of those who commit serious crimes are detained for their crimes. Although the police may be able to solve a large number of crimes, their actions are often affected by other components of the criminal justice system.
- **Perceptions on legal immunity:** Because of the advanced knowledge that criminals have about the law, they tend to gauge risks according to how the criminal justice system really operates and not how it is supposed to operate. As a result, the many points in the law enforcement process where prosecution can be terminated may be perceived as loopholes prohibiting severe punishment. Also, the persistent possibility of leniency due to the common practice of individualising punishments may be seen as an escape route that can save the criminals from punishments. Because of general information about the risks of serious punishment that are known by criminals and the knowledge about criminal justice system, many criminals understand that there are manifold opportunities for getting off lightly. Most criminals may think that they are invincible because of the realities about detection, arrest,

conviction and sentencing. Because criminals are not ordinarily fooled by empty threats, deterrence requires a relatively high probability that sanctions will be imposed.

4.5.3 Severity of sanctions

In order to ensure that deterrence works effectively, punishment must be painful enough to scare those who are contemplating crime. Punishment must offer more losses than gains. For example, small fines will not deter hired killers; hence, there should be efficient law enforcement. Determining the severity of punishment in instilling fear in those who might consider crimes, however, is much more difficult. It is important to ascertain the threshold necessary to deter particular kinds of offenders because inflicting punishment is not only costly to the government's resources but also to those who will be subjected to it.

In the criminal justice system, it is generally acknowledged that the order of severity, from most harsh to most lenient, is capital punishment, imprisonment, probation, suspended sentences and fines. However, this list differs from one state to the other because, for example, countries like South Africa have abolished capital punishment. In other states, however, some contend that capital punishment is less severe than life imprisonment as no pain will be experienced at death while others suggest that death is the worst punishment to be inflicted on any person.

Imprisonment, in contrast, is an oppressive and brutal experience according to most people. Even though there are people who believe that imprisonment is better as it improves their living conditions, for most people the deprivations of freedom, privacy and autonomy make it difficult for them to even think of spending even a short time in detention. Even those offenders who are detained under minimum security which offer some privileges of life and greater freedom of choice as compared to medium and maximum security disapproves of imprisonment. While probation imposes constraints on criminal behaviour, the supervision of daily activities and the continuing potential for revocation and consequent imprisonment - even though it allows the criminal freedoms - fines on the other side can create financial hardships even though they are often imposed on those who can afford them.

Unlike probation, suspended sentences allow convicts to walk free as they set no limit on behaviour. Although it may seem like a negligible punishment, it can be costly as offenders for serious crimes, in some states, lose certain privileges such as the right to vote, the right to hold public office, and the right to engage in certain occupations. In some states, offenders might even lose the right to have licences such as drivers' licences and firearm licences (Levine et al, 1980: 368).

There are forms of informal punishment that may deter criminal activities in addition to capital punishment, imprisonment, probation, suspended sentences and fines. Arrest, whether it leads to any formal sanction, is a humiliating experience except for those who are used to it. Not only does arrest make it difficult for the criminal to obtain employment, it also makes it difficult for the person to be accepted by society in general. In addition, if such person is prosecuted, he or she suffers financially and emotionally while mounting a defense.

Even though there is a general agreement regarding the severity of punishment, it is not clear just how much more intimidating a harsh penalty is than a more lenient penalty. When legislators double the length of sentence from five to ten years for a certain crime, the punishment is presumed to be twice as heavy (Levine et al, 1980: 369). But beyond a certain level of severity additional increments of punishment may easily be understood by those contemplating crime. Smaller differences in punishment at the low end level may, however, have a greater impact than larger differences at the high end. Diminishing returns may set in as penalties are increased to incredulous levels.

There is no direct relationship that has been uncovered between the severity of punishment and a crime even though research has clearly linked higher certainty of punishment with lower crime rates. It may be that those plotting to commit serious crimes are much more concerned with the chances of being caught than the subsequent consequences if they are caught. However, if the possibilities of getting away with the crime are great, the penalties may seem like far-fetched possibilities. Murder, for example, is a special case because the high rates of apprehension make penalties worth contemplating and the longer sentences applied in some areas give some murderers a more fearful picture of what could happen to them. This combines with other

research findings on the fact that the combined effects of certainty and the severity of punishment do yield less crime, also suggesting that severity deters only when certainty levels are high enough to make severity a concern.

In some instances, making sentences more severe might cause more crime than stopping it. This can be attributed to several reasons. Firstly, judges may stall to convict at all and may lean over backwards in order to obtain further evidence if prescribed penalties are excessively high. Secondly, criminals who might otherwise have committed a lesser crime may see nothing additional to lose by committing additional serious crimes. If a whole range of crime carries very severe punishments; for example, if punishment for burglary and robbery are the same, a criminal can use physical force against a resident in trying to obtain that person's property because the punishments are the same. Furthermore, if punishment for rape equals that of murder, a criminal might not see any reason for not killing the victim so that they do not testify against them. Thirdly, some evidence has been found that heavier penalties result in a high recidivism rate. It is relatively easy to increase severity by simply amending laws and building more correctional centres but this may not deter more crime.

4.5.4 Criminal responsiveness to deterrence

Deterrence is based on the assumption that offenders choose to commit crime by rationally assessing the opportunities for competing legal and illegal activities. Crime will be avoided if a person realises that the rewards for a crime are small in comparison to the risks. Therefore, a person's self-interest comes first.

Under several circumstances, however, such assumptions are unwarranted. Firstly, many crimes are not merely planned they just occur on the basis of impulse. Examples of these crimes can be homicides and aggravated assaults which take place as a result of disagreements or quarrels. Criminals who are motivated by intense emotions are unaware of the legal consequences thereof. Like serious crimes, lesser crimes can be irrationally motivated. Another bar to deterrence can arise when the felt need of the criminal is so great that careful weighing of risks is obstructed. For example, unemployed school dropouts and drug addicts desperate for money will often

engage in crimes in order to alleviate their destitution (Levine et al, 1980: 371). Deterrence is destructed when the attraction to the fruits of crime is so great that it leads people into taking insane chances, which nevertheless sometimes succeed.

People who are doing well in life are more likely to commit crimes because of greed and not a need. They are more likely to be attentive to risks than those who are living more marginally because they have much more to lose. Therefore, white collar criminals are much more feasible targets of crime prevention strategies than stress deterrence. This is because they will often insist on a far more favourable set of odds because taking risks to participate in any criminal activity.

In addition, members of youth gangs can be subjected to intense peer pressure to commit crimes to show to the fellow members their courage. Under these circumstances the fear of being undermined within the group is far greater than the fear of legal consequences because being accepted by friends is more important than worrying about punishment. Furthermore, being punished can become a status symbol.

Apart from criminals who commit crime out of emotion or desperation, there is the third kind of criminal who is referred to as the 'fanatic' because he/she is unaffected by sanctions. These are the people who commit crimes for political or moral pleasures. They may feel so passionate and righteous about their activities that they would not mind imprisonment.

4.5.5 Swift punishment

Levine et al, (1980: 358) stated that for justice to be effective it must be swift. Delays in criminal justice represent sustained punishment and the anxiety caused by the prolonged uncertainty may be disturbing as receiving a clear-cut sanction right away. The long ordeal that defendants go through on the way to conviction and sentencing may be functional deterrence. In some instances, where the accused is detained prior to the trial, a delay may be most effective because of the miserable conditions of detainment.

4.6 THE PROCESS OF DETERRENCE

“Deterrence is the inductment of another party...to refrain from a certain action by means of a threat that this action the threatener...to inflict retaliation or punishment...In other words deterrence is persuading the deterred that his own interest compels him to desist from committing a certain act. Such persuasion is achieved by calculations of gain against loss...To make deterrence effective, the deterrer makes certain that the level of retaliation...overrides the gain the deterred anticipates...To the extent that such an action is motivated by psychological impulse rather than calculations of gain, the strength of deterrent threat must of cause also offset the pressure of such impulses” (Morgan, 1983: 24).

According to Zimring and Hawkins (1973: 74), there are various psychological processes by which the threat of punishment might result in deterrence, i.e. simple deterrence; threat of punishment as a teacher of right and wrong; threat of punishment as habit builders; threat and punishment as mechanisms for building respect of the law; and, threat and punishment as a rationale for conformity.

4.6.1 Simple deterrence

Simple deterrence is based on the assumption that threats can reduce crime by causing a change of heart, induced by the unpleasantness of the specific consequences threatened. Various authors have over the years supported this statement. Beccaria (1963: 30) states that the intention of punishment is to instil fear in other men. Within the theory of simple deterrence people who are tempted by a particular form of threatened behaviour will refrain from committing crime because the pleasure that they might obtain from committing such a crime is more than offset by the risk of great unpleasantness communicated by means of a legal threat. In this model, a person compares crime and its penalty and the results of weighing pros and cons of lawbreaking do not alter the individual's personality, or his or her sense of right or wrong, or his or her general tendency to obey the law. For simple deterrence to work, each individual must be aware that committing a criminal act is a risk not worth taking. As stated by Bentham (1843: 399), “the profit of the crime is the force which urges man to delinquency: the pain of the punishment is the

force employed to restrain him from it. If the first of these forces be the greater the crime will be committed; if the second, the crime will not be committed”.

4.6.2 The threat of punishment as a teacher of right and wrong

The process of socialisation keeps most people law-abiding, rather than the police. The threat and example of previous punishments play an important part in the socialisation process as a teacher of right and wrong. Tappan (1960: 247) referred to this process as the “educative-moralising function of the law” which is based on the idea that punishment as a concrete expression and society’s disapproval of an act help to form and strengthen the public’s moral code and thereby create conscious and unconscious inhibitions against committing crimes. In this process, punishment is seen as a means of expressing social disapproval; hence, criminal law and the way it is imposed supplements and intensifies the moral influence acquired through education and other non-legal processes.

Punishment as a means of expressing social disapproval is a device designed to influence persons by symbolically intimating that society’s moral condemnation and penal provisions may be seen as cherished values. When the ritualistic aspect of punishment and the traditional criminal legal process achieves the dramatisation of evil, education then comes into effect. The effectiveness of punishment as a means of conveying social reprobation can be clearly reflected in the stigmatisation and loss of status commonly involved in criminal punishment.

There are three aspects that have to be distinguished when punishment is used as an educational technique (Zimring & Hawkins, 1973: 81). Firstly, by simply associating unwanted behaviour and bad consequences, individuals may view the behaviour itself as bad. For example, if a person is aware that people who steal are treated badly that person will associate wrongfulness with stealing thereby concluding that stealing is wrong. Secondly, any legal system which imposes punishment will communicate to the individual that the legal system views the threatened behaviour as wrong and such information will also affect the moral attitudes of the individual. The reasoning would be that the institution that the person respects views the behaviour as wrong, therefore the person should also consider the behaviour to be wrong. Thirdly, threat and

punishment may promote moral education by serving as an attention-getting or attention-focusing mechanism. For example, the threat of punishment for stealing forces the individual to think about the moral nature of stealing. As mentioned above, an individual may conclude that stealing is wrong because it causes other people to suffer and undermines the security of a system of a private property. In light of punishment as an eye-opener, the threat of punishment provides only the occasion for reflection rather than any substantial moral directive.

4.6.3 Threat and punishment as habit builders

Andenaes (1952: 180) distinguished three principal general preventive effects of punishment, i.e. punishment may have a deterrent effect; punishment may strengthen moral inhibitions and; that punishment may encourage habitual law-abiding conduct. Andenaes further states that, with fear or moral influence as an intermediate link, it is possible to establish a condition of habitual lawfulness. A perfect example of this can be found in the military where there is extended teachings about the discipline and stern reactions against breach thereof can bring about a purely automatic habitual response. This will not only take place where obeying specific orders is concerned but also with regard to general orders and regulations. It is this kind of patterned behaviour and tendency to behave automatically in a certain way which is referred to as habits. Such habits are powerful factors in preventing any infringements of the law. Repeated observations of a rule which may initially be conscious and deliberate can induce a habitual disposition and ultimately automatic compliance. Hence, it can be concluded that as the habit of obeying the law in particular situations develops over a period of time, the threat of punishment may initially produce a number of separate habits of compliance. This can, in turn, result in a more generalised habit of obeying the law so that, ultimately, a position where people automatically and without conscious cognition follow a pattern of learned behaviour that excludes the criminal alternative without even thinking about it can be reached.

4.6.4 Threat and punishment as mechanisms for building respect for law

People would find it difficult to believe in any legal system if its commands were not strengthened by a threat of punishment. For many people the threat alone would probably be

sufficient to ensure obedience. Because some people might not be aware of the threat of penalty, it is important to clearly indicate to them concrete evidence of punishment which are relevant to their own situation (Zimring & Hawkins, 1973: 87).

Another reason why penalty provisions of the law require enforcement is that exemption from punishment can have demoralising consequences in a sense that even those who are law-abiding citizens can be demoralised by watching those who infringe the law escaping unpunished. Every member of the community would feel wronged if justice is escaped. However, if punishment is imposed, the society in general would understand the seriousness of the legal system in prohibiting criminal behaviour. The unpunished criminal poses a direct challenge to the authority behind the law while the significance of the individual sentence and the execution of it lies in the support that these actions give to the law.

4.6.5 Threat and punishment as a rationale for conformity

It is disturbing for one to be faced with the desire to break the law; hence, even those who completely know that breaking the law is wrong may need help in resisting such temptations. As a defense mechanism against such pressure, within persons that are morally distressed, additional pressure towards conformity is required. As a result, the threat of punishment may provide the additional pressure when needed.

Furthermore, the disturbing spectacle of being perpetrated may need to be neutralised by the reassuring example of punishment being imposed. The exemption from punishment may not only discourage the respect of the legal authority but also undermine the authority of conscience (Zimring & Hawkins, 1973: 88). Threat of punishment may provide an additional reason for obedience to law in circumstances in which individuals are subject to temptation. Such rationalisation can also be applicable in the group decision-making process and might be a significant factor in crime prevention, especially amongst juveniles.

Although little is known about whether, when and how much these mechanisms affect behaviour, the threat of punishment may have slight but significant effects on the quality of law-breaking in society.

4.7 OBSTACLES HAMPERING DETERRENCE POLICIES

To achieve deterrence and all it is meant for is a difficult task because the criminal justice system does not make legal threats very reasonable. In addition, policies that are put in place in order to intimidate criminals by making punishments more certain or more severe are often not recognised or are undermined by political indecisiveness, bureaucratic resistance and the adaptability of the criminal population. The following factors hamper the adoption, implementation or effectiveness of the deterrence system:

4.7.1 Political feasibility

The political process in any state weakens promising deterrence plans. This is mainly because of the self-interest of politicians, interest groups and individual citizens which often frustrates the adoption of suitable policies that might help prevent crime. For example, such politicians who are sensitive to the power of gun lobby may reject any legislature that deals with cracking down on the possession or the use of guns. Though strict gun laws have proved to be effective in decreasing crimes such as murder and serious assaults by discouraging people from taking them outside their homes and offices, but in many states there are still provoking organisations in favour of guns (Levine et al, 1980: 374).

In addition, the expense that comes with a deterrence program may lead to political rejections because deterrence does not come cheaply. Political resistance to deterrence schemes often originate from bureaucrats who are disturbed by new institutions taking over their responsibilities. For example, although some police departments may be in support of civilian patrol operations, the success of such civilian efforts may be a threat to many police officers; it has the potential of increasing surveillance capabilities at no cost to the taxpayer and they may feel that the task should be exclusively theirs. As a result, the organisational self-interest in

safeguarding their role in the criminal justice system remains larger than their commitment to crime prevention.

4.7.2 Difficulties with the implementation process

It is often difficult to coordinate not only the chaotic but also the often uncoordinated criminal justice system. Although political difficulties can be overcome and sound deterrence policies be adopted, these policies themselves are often determined by the very same people who have the responsibilities of implementing them. In order to increase either certainty of conviction or the severity of punishment there has to be consistency in a bureaucratic leadership which is not always there.

In order to successfully implement deterrence strategies, there has to be coordination and common understanding within the criminal justice system's leadership because if that is not the case the instructions offered at the top may be disregarded at the bottom. Consequently, what seem to be policies that failed are often policies that have never been tried.

4.7.3 Adaptation by criminals

Career criminals often have the ability to surpass deterrence policies directed at them. Even though it is rare to hamper deterrence efforts, many criminals can and do use common sense in order to figure out ways of protecting themselves from such deterrence. Firstly, criminals learn to distinguish credible threats which are attached to risks from the ones that are not. For example, shoplifters would likely not be intimidated by rotating television cameras because they know that images are blurred, the area viewed at any one time is quite limited and store personnel rarely look at monitors. Criminals often have "supernatural" abilities to recognise and disregard useless or insufficient law enforcement efforts.

Another means of preventing deterrence efforts from being successful is when a criminal changes his or her tactics by shifting operations away from high-risk situations to safer domains. This is referred to as crime displacement – change in the nature or location of crime but not in

the amount of it. Criminals can change their locations, times or targets rather than facing deterrence attempts (Levine et al, 1980: 377).

Though these changes may seem to be disastrous for all deterrence efforts, there are, however, certain limits to crime displacement. Criminals must be quite familiar with the area in which they work and they have a tendency to stay close to their own communities, even if the risks of crime are lower elsewhere. Furthermore, criminals avoid detection by refraining from standing out. Forcing offenders to change their turf may increase their fear of being caught and some of them may decide that it is safer to give up crime than to explore other means of committing it. However, the keenness and the versatility of criminals often enable them to outsmart the many attempts to prevent them from being successful.

4.8 THE COST EFFECT OF DETERRENCE

Deterrence, like any other crime prevention strategy, can lead to the sacrifices of other public goals for it to be achieved. Even if all the theoretical and practical obstacles to success are overcome, a question that should always be kept in mind is – is crime prevention really worth the price? In the ensuing sections of this chapter the costs of deterrence which are economic; threats to due process and injustice will be discussed.

4.8.1 Economic costs

Deterrence does not come cheap as it can require extra personnel, special equipment and additional facilities from the already expensive criminal justice system, for example, the use of incarceration has been quite costly. Furthermore, increasing the probability of arrest is also costly, for example, an investigation of a white-collar crime requires the scrutinising of minute details such as financial records, bank statements and payments. It is costly to simply obtain one fraud or corruption conviction.

It is important to compare benefits with costs when evaluating the returns of deterrence as this can lead to decisions to abandon a deterrence policy that is relatively successful. However,

crimes that result in severe damages may well deserve more expensive government resources even though it might be difficult to attach monetary figures to other crimes such as violent crimes. For victims of assaults, rapes and robberies, what is lost in terms of property, medical expenses and wages is often nothing compared to the psychological harm experienced. Nevertheless, it is important to assess the social and economic impact of such crimes in order to obtain a balanced view of the value of deterrence strategies.

In determining the costs of crime prevention, the issue of costs in deterrence cannot be ignored. A number of points can be made about cost considerations in deterrence if the successful establishment of priorities in choosing among different types of costs seems difficult. For example, since imprisonment is the most costly form of penal measure by far, in terms of both the cost to the national economy and the cost of suffering on the part of the offender and their families, one has to check whether longer imprisonment sentences are worthwhile. In determining these, four things must be considered, i.e. program costs; the nature of the program's effect on crime; extent of program effects; and the availability of alternative means (Zimring and Hawkins, 1973: 56).

- Program costs: As mentioned earlier, imprisonment is the most costly form of punishment and it generates a number of different types of costs. These costs can be in monetary or nonmonetary terms or direct or indirect and they are either absorbed by the state or by the inmates. When deterring the costs of imprisonment one has to start with the direct monetary costs that are absorbed by the state because they are easy to quantify and determine. After determining the costs that are absorbed by the state then it will be easy to determine the costs absorbed by the inmates. However, it is difficult to determine other types of possible costs such as the effect of overcrowding and decreased ability on the part of the ex-offender to adjust to outside life which is difficult to estimate. Adding the costs absorbed by the state and the cost absorbed by the inmates will be invalid hence the two should always be separated. But even this incomplete picture of program costs provides a useful point of departure. It is important to judge the utility of committing resources to crime control research against the total cost of crime control programmes because the measurement of cost cannot be achieved without the cost.

- Nature of the program's effect on crime: Reasons given for longer sentences are that they will reduce crime. However, it should be determined whether such long sentences are indeed reducing crime. Longer sentences can reduce crime in the following three ways: offenders might have committed crime if they were outside during their sentences; offenders serving longer sentences can be convinced that committing crime is not worth the risk of penalties; and those on the outside who were thinking of committing crime could be deterred from committing such crime.

A desire for a greater degree of marginal deterrence could be the motivation for longer sentences. Longer sentences, like any other crime prevention strategy, may have an impact on the crime rate in a number of ways. Hence, any rational analysis of the results of the program should take into account all these different mechanisms that may have an impact on crime. Such different types of impact must, however, be studied in different ways. In testing the hypothesis about the reduction of crime amongst offenders serving extra sentences, it is important to compare the records of those offenders after release to that of offenders who served shorter sentences. If it can be uncovered that longer sentences do not result in crime reduction, then the evaluation would be completed. However, if it can be uncovered that longer sentences have an impact on criminal activities, then it will be the start of the evaluation of the program.

- Extent of program effects: As indicated, it is not sufficient whether programs decrease crime by simply evaluating increased sentences. It should also be ascertained how much of an effect is attributable to increased sentences. One should ask about marginal changes in punishment rather than differences between the threats of punishment. Rather than being interested in the quality of an effect, one should be interested in the quantity of an effect. Through following these steps, the same set of findings may have strikingly different implications not only for the researchers but also for policy planners.
- The availability of alternative means: "Even programs with crime prevention results worth their cost should be subordinated to alternative programs that can achieve better results at the same cost, or similar results at lesser cost" (Zimring and Hawkins, 1973: 60). As indicated earlier, the suffering of offenders should be regarded as a cost. If there is an alternative program which comes with less suffering of offenders, then such alternative program should

be preferred as being cheaper. Any amount spent by the correctional system in striving for crime reduction is more usefully thought of as part of a budget for crime reduction than simply or exclusively as part of the correctional system budget. Even the amount spent on sentences to reduce crime could also be spent on programs such as better job training which are aimed at reducing crime after the offender has been released. Other agencies can use the same funds to achieve crime reduction; for example, through more intensive policing which may lead to greater success.

4.8.2 Threats to due process

While deterrence entails government suppression of the individual, due process entails the individual's protection from the government. Although these two concepts may seem unattached, deterrence methods often threaten due process. In order for deterrence to work effectively, it is better that few innocent people be wrongfully convicted if it strengthens the law enforcement network around criminals. Priorities are totally different when due process is the goal. In due process, it is better to let some guilty persons free in order to spare the innocent from wrongful treatment.

An example of this emerges most clearly with regard to police surveillance tactics. In this situation, the use of undercover police as civilians results in more arrests and convictions which are crucial elements of deterrence. Criminals are more likely to be caught in the act if they are unaware of a police presence. Criminals may refrain from committing crimes if they are not sure whether they are under surveillance or not.

There is always a danger associated with the right to privacy. For example, the presence of large numbers of unannounced police in places where they are least expected can prevent unorthodox but perfectly lawful activities and make people suspicious of one another. This is even a greater problem if undercover police officers take a further step – infiltrating organisations suspected of criminal activities. Even though this can be successful in obtaining information about crimes such as terrorism and gang violence, it may have an impact on the freedom of association.

Another form of aggressive police activity related to the due process – deterrence conflict – is field interrogation where the police stop, question and search persons who appear suspicious but who are not committing any crime or linked to any criminal activity. Even though few arrests can come out of these interrogations, the visibility of the process prevents criminals from taking chances and committing crimes.

4.8.3 Injustice

Although the use of punishment forms the basis of deterrence, the inflicting of serious harm to those who are convicted of criminal offences might be unjust. Firstly, some individuals view the use of punishment as an example as unfair. An example of this can be found in a situation where there is a mass strike and only a few individuals are arrested and punished while many others who did the same criminal acts went unpunished. It is deemed improper to ruin the lives of a few people, even if they are guilty, in order to keep others in line.

Secondly, using punishments that are very unpleasant and that violate fundamental standards of civilised conduct is problematic. An example of this can be capital punishment. Even though this matter is subject to much debate, regardless of whether it actually deters crime or not, some consider it to be a shockingly evil act on the part of the government; hence, the horrible nature of killing by the government is often an argument when it has to be abolished. The physical realities about the imposition of capital punishment need to be clearly understood when resolving whether it is morally acceptable or unacceptable.

Whether the pain rendered to criminals is warranted by the protection deterrence affords society is a very personal matter. It is very difficult to determine whether any of the costs of deterrence which includes money, deprivation of due process, injustice or inhumanity are worthwhile. To make such a comparison one must weigh individual preferences for those values against concern about particular crime problems. Whether deterrence works is not the only appropriate question in deciding whether it is a wise social policy; hence, the evaluation must encompass the entire set of public interest goals in criminal justice.

4.9 SUMMARY

In this chapter, it was uncovered that the threat of punishment can prevent wrongdoings. The fear of legal sanctions is a powerful constraint on human behaviour and, when deciding, people often choose whether or not to follow the law by judging the likely consequences of disobedience. It was also uncovered that the limited resources and multiple purposes of the criminal justice system hamper the development of effective policies which are aimed at crime deterrence. Although the threat of deterrence often fails because the benefits of crime outweigh the risks, it is important to strengthen the deterrence capabilities of the criminal justice system.

Deterrence cannot be achieved without any obstacles. As discussed in this chapter, not only is deterrence difficult to implement but career criminals often have the ability to surpass deterrence policies directed at them. In addition, deterrence does not come cheap and it can lead to the sacrifice of other public goals in order for it to be achieved. While individual deterrence is aimed at one person who is convicted and punished for a crime, general deterrence aims to prevent the population at large from committing criminal acts. For individuals, if the consequences are positive they will engage in the behaviour but if they are not positive, they will avoid the behaviour. However, the extent to which either convicted or potential law violators are deterred by severe punishments is impossible to determine accurately because only those who are not deterred become clients of the criminal justice system.

CHAPTER 5

THE ROLE OF RETRIBUTION AS A CRIME PREVENTION TOOL

“A city is maintained by proportionate reciprocity. People seek to return either evil for evil, since otherwise (their condition) seems to be slavery, or good for good, since otherwise there is no exchange: and they are maintained (in an association) by exchange.”

Aristotle

5.1 INTRODUCTION

Because punishment involves the deliberate infliction of suffering on a supposed or actual offender for an offence, it is generally accepted that it requires moral as well as legal and political justification. Today, retribution can fairly be regarded as the leading philosophical justification of the institution of criminal punishment. It is a philosophical theory which is aimed at providing a moral justification for the practice of punishment. Retribution as the justification of punishment will be discussed in this chapter. Inputs from various philosophers who played an important role in the development of the theory of retribution will be analyzed. Like any other concept, retribution as a justification of punishment also has its criticisms which will also be outlined in this chapter. This is mainly because punishment in the form of retribution is not meant to help the victim but rather to provide them with a sense of vengeance. In addition to the criticisms of retribution, the advantages of the theory of retribution will also be discussed.

5.2 THE CONCEPT OF RETRIBUTION

In retribution, actions to get even with the offender are taken. The term retribution is similar to revenge which throughout the history has been one of the most important justifications of punishment (Reid, 2006: 66). In terms of revenge, the victims were allowed to inflict on their attackers the same kinds of pains suffered by them. However, some authors believe that revenge and retribution differ. According to Pojman (2004: 51), people often confuse retribution with revenge. While retribution is the rationally supported theory that criminals deserve punishment that fits their crimes, revenge signifies inflicting harm on the criminals out of anger. Unlike revenge, which is based on the hatred of the offender, retribution is based on punishment of the

offender in proportion to the gravity of his or her crime whether or not the victim or anyone else desires it. Revenge is a personal matter and retribution is imposed by the courts, after a trial where an offender will be convicted (Van Den Haag, 1975: 10). The criminal justice system imposes retribution and not revenge because the state is believed to be more fair, accurate and dispassionate than individuals. When sentencing, the courts impose sentences out of hurt but also as part of the community's reaction to a moral wrong which should be conveyed to the offender. Gendin (1970) stated that because revenge is a personal response, it is therefore subjective; anyone who feels that they have been aggravated personally by an offence may seek revenge. When seeking revenge, individuals ignore the rules as to what is appropriate and what is not simply because they got angry. Those who seek retribution, in contrast, are concerned with rules and understand what is appropriate and what is not.

Revenge is private and personal but retribution is administered by mutual parties; hence, one who seeks revenge takes pleasure in the suffering of his or her victim but one who seeks retributive justice is not seeking the victim's suffering. The following are elements that distinguish revenge from retribution (Nozick, 1981: 366):

- While retribution is done for a wrong, revenge may be carried out for an injury or harm which is not necessary for the wrong
- Unlike revenge, retribution sets an upper limit on punishment based on the seriousness of the offence
- Those who impose retribution have no personal relations to the victim of the wrong for whom they exact retribution whereas revenge is personal
- Revenge involves a specific emotional tone – pleasure in the suffering of the punished – while retribution involves no such thing and only focuses on justice
- Revenge cannot be guaranteed because those who seek it are not committed to punishing a similar act done to anyone but only acts done to a particular group be it a family member or a friend. Retribution, however, is based on seeking justice – similar offences receive similar punishments.

Nevertheless, the concept of retribution and revenge continues to play an important role in modern systems of criminal law (Vidmar, 2002). They are the two highly related concepts which

are not only the oldest but also the most basic and most persuasive justice relations associated with human social life. Kay (2005: 17) identified similarities between revenge and retribution and stated the following:

- Both retribution and revenge use the offenders' behaviors as the standard for their actions - "do unto others as was done unto you"
- They both promise victims that punishing the offender will lead to satisfaction
- Both revenge and retribution encourage, for example, family members of murder victims to remain in the state of victimhood which can only be resolved by harming the offender
- They both assume that some humans deserve grave or lethal harm
- They both assume that offenders' bad moral merit overrides their claims as human beings to be protected from death and degradation
- They both encourage punishers to numb themselves to the violence enacted upon perpetrators.

The philosophy of retribution is referred to as an eye-for-an-eye, tooth-for-tooth doctrine which has been adopted from the Old Testament. It is the oldest justification of punishment (Clear & Cole, 1997: 78). Unlike other types of sanctions (deterrence and rehabilitation), retribution only focuses on the offense and has nothing to do with future criminal prospects or means to reform. Those who believe in retribution are of the opinion that it helps the community to emphasize the standards it expects all of its members to uphold. However, it should be noted that retribution does not necessarily mean that a person who harms someone in the course of committing a crime be physically harmed. It simply means that an offender's punishment should correspond to the nature of the committed crime (Levine et al, 1986: 475).

There are three elements that underline the principle of retribution, i.e. "a proportionate penalty; a penalty that is deserved; and a penalty that expresses the moral combination of society" (Adler, et al., 1994: 344). The anger, grief or pain leads to the individual seeking revenge. Hence, when discussing revenge or retribution, the Latin phrase *lex talionis* which is based on the principle that one of the purposes of the law is to provide equitable retribution for an offended party (Snarr, 1996: 50). The principle of *lex talionis* is based on the idea of doing to the offender, as punishment, what the offender has done to the victim. The act of offending and the act of

punishment should be considered in *lex talionis* and they should be the same. Because it is based on the belief of matching the penalty with the crime which is a backward looking approach to punishment, *lex talionis* is regarded as a principle of retribution. Reasons for punishment are always given in the past tense, hence, for example, an offender's life was taken because he or she took someone else's life.

One cannot discuss the concept of retribution and not discuss the concept of just deserts (Birzer & Robertson, 2004: 35). While retribution emphasizes that punishment should be administered because the offender deserves it, just deserts focuses on social contract where citizens are obliged to follow certain behavioral patterns and failure to do so may lead to punishment. Although just deserts is similar to the idea of retribution, it stresses social justice rather than vengeance. It thus maintains that punishment should only be used in order to assure a sense of fairness in the society (Quinn, 2003: 7). It is based on the principle that there should be equal penalties for similar crimes. In just deserts, the emphasis is not only on making punishment certain but also consistent while focusing on the society's sense of fairness rather than the status of the victim or the offender. In order to prevent crime, both retribution and just deserts use punishments. Whether offenders learn to change or stay away from crime is irrelevant, they simply deserve punishment. Supporters of retribution use the following justification (Silverman, 2001: 21):

- Religious missions are fulfilled through retaliation. There are biblical sanctions for the punishment of transgressors, so society is doing God's work by carrying out His punishment.
- Retribution removes the tension in society caused by the criminal act, thereby creating harmony through retaliation.
- Because offenders suffer like their victims, it makes victims whole again.
- Retribution washes the guilt of the criminal away through suffering and expresses society's disapproval of the behavior.

Retribution is recognized as a proper and prominent goal of sentencing internationally (Ntshangase, 1996: 17). It is hailed as one of the oldest and most universal motives of punishment. Unlike vengeance, retribution is imposed by the courts after a plea of guilty or trial in which the offender is convicted. Although there are various types of retribution, there are two

broad categories of retributivism which can be justified in various ways, i.e. negative and positive retributivism. Negative retributivism places restrictions on punishment and stipulates that only the offender must be punished not the innocent. Negative retributivism also stipulates that offenders should not be punished excessively or more severely than necessary after considering the crime committed. Positive retribution, however, places affirmative requirements on punishment. Like negative retributivism it stipulates that the innocent must never be punished. However, it makes it clear that the guilty party must be punished and such punishment must not be too severe or too light given the type of offense (Mackie, 1985: 207).

5.3 THE EVOLUTION OF RETRIBUTION

Retribution has a long history and was characterized by a method where a punishment which is identical to the offence is imposed (Pratt, 2008: 381). The signs of retribution have been around for over 3500 years (Mays & Winfree, 2005: 5). An example of this can be found in the Code of Hammurabi which dates back to the 18th century. In the code, it is stated that “if a man destroy the eye of another man, his eyes should also be destroyed. If a man breaks another man’s bone, his bone should also be broken and if a man knocks out a tooth of a man, his tooth should also be knocked out. Likewise in biblical eras the laws of Moses also stipulated that life should go for life, eye for eye, tooth for tooth, hand for hand, burn for burn, wound for wound, bruise for bruise” (Exodus 21: 23 – 25).

However, the modern concept of retribution is considered more civilized than its early origins (Stinchcomb & Fox, 1999: 48), unlike Ancient and Medieval punishments which were violent and bloody since they included flogging, public boiling, mutilation, stocks and pillories, blinding, cutting out tongues and similar tortures. In retribution, criminals are punished in a manner relevant to the severity of their crimes. Therefore, it is only fair that criminals who have committed the most serious crimes receive the most severe penalties.

During the Age of Enlightenment, retribution emerged as a significant feature in determining sentences. Up to that time, punishment in the pre-modern era was not only uncertain but also unpredictable with minimal regard for due process. At that time, punishment was the

responsibility of the rulers and was only exercised with appalling force and brutality on a few, while used minimally on a much greater number of those who violated the law. Except for public executions, other forms of punishments were unpredictable in the amount of punishment that would be inflicted to offenders. Such punishments include stocks and pillory which were used for public humiliation and often further physical abuse which was sometimes lethal.

The Post-Enlightenment era saw new methods of punishment taking place. Foucault (1979: 105) notes that “those who abuse public liberty will be deprived of their own: those who abuse the benefits of law and privileges of public office will be deprived of their civil rights; speculation and usury will be punished by fines; theft will be punished by confiscation; ‘vain glory’ by humiliation; murder by death; fire-raising by the stake”.

5.3.1 The influence of Beccaria on retribution

Cesaria Beccaria identified the need for a fixed and unchangeable law which also promotes equality (Pratt, 2008: 382). According to Becaria’s approach, sentences imposed must ultimately reflect the offence committed and there must be a balance between the sentence passed and the circumstances of the crime committed. In his 1764 “On crimes and punishment” Becaria argued against torture to obtain confessions, secret accusations and excessive power of judges. He believed that there were only two reasons to punish offenders, i.e. retributivism and utilitarianism which include reforming offenders, incapacitation and deterrence.

5.3.2 Retribution and utilitarianism

According to Bronsteen (2007), both retributive and utilitarian theories of punishment carry explanatory power because they strive to justify criminal punishment. While utilitarianism is a consequentialist theory which is concerned with future consequences of punishment, retributivism views punishment as a deserved response to a crime that has already been committed. The consequential aspect of utilitarianism takes place when the utilitarians have to look at the consequences or outcomes of possible punishment in order to determine when punishment should be applied. Although punishment is painful to the person experiencing it, the

utilitarian believes that it increases the happiness of the society. Furthermore, retribution is more concerned with punishing the offenders because they deserve to be punished. According to the retributive theory, offenders are punished because they have done something wrong and are guilty. According to Schauer and Sinnott-Armstrong (1996), retributivism refers to any or all of the three different claims, i.e. minimal, permissive and maximal retributivism. In minimal retributivism, punishing the person who is not guilty is wrong. In permissive retributivism, it is never wrong to punish someone who is guilty. In maximal retributivism, however, punishment of the guilty is permissible and failure to punish someone who is guilty is impermissible.

5.3.3 The influences of Kant on the theory of retribution

Even though elements of retribution can be found throughout the history, Immanuel Kant is regarded as the first significant retributive contributor (Mandery, 2005: 5). Born in East Prussia in 1724, Kant is considered the first since biblical times to argue that harming the offender is good in itself rather than evil (Golash, 1996: 18). Kant wrote that retribution is grounded in respect for the autonomy of the offender. According to Kant, if a criminal is punished to prevent others from committing a similar crime, then they are being treated as a means to an end. But if a criminal is punished too little or not punished at all because of some mitigating factors in his or her personal history, then the notion of his or her free will is denied. According to Kantian explanation, the purpose of punishment is to restore the equilibrium which supposedly existed before the offense was committed.

In explaining why reasonable mistakes deserve punishment, Kant stated that a person should be punished in “proportion to his inner wickedness” (Schauer & Sinnott-Armstrong, 1996: 692). He further explained that when a person honestly and reasonably believes that his or her actions are harmless or justified then inner wickedness is absent. According to Kant, only the law of retribution can specify the quality and the quantity of the punishment. This, according to Kant, is mainly because all other principles are fluctuating and unsuited for a sentence of pure and strict justice because there are extra considerations unto them. However, it is difficult to determine what kind and what amount of punishment the public would accept. As a result, Kant like many other philosophers holds that the severity of punishment should be proportionate to the severity

of the crime. As to how severity would be measured, Kant insisted that it lies in how rational people would be about the undesirable effect of punishment.

Kant insisted that “the institution of punishment can never be used merely as a means to promote some other good for the criminal himself or the civil society; instead it must in all cases be imposed on him only on the grounds that he has committed a crime, for a human being may never be manipulated merely as a means to the purposes of something else. He must first be found to be deserving of punishment before any consideration is given to the utility of his punishment for himself or for his fellow citizens (Kant, 1965: 100).

According to Wolf (2002: 25), in addition to defending retributivism, Kant presented a theory that rests on the general view that political obligation should be analysed contractually in terms of reciprocity. For law to remain just amongst citizens, it should be ensured that those who obey it are not victimized by those who do not obey it. In other words, Kant insisted that no one should benefit from criminal acts. In his philosophy, Kant made a connection to three factors, i.e. free will, moral agency and rationality. He insisted that the demands of rationality and morality are the same. In addition, he insisted that to be a free agent is to be a moral agent too. While concluding the combination of the three, Kant stated that a free will is a will which is not only directed by rationality but it is also a will which is subjected to morality. For these reasons, human beings are regarded as moral beings.

Kant further insisted that judicial punishment should never be used to promote some other good, whether for criminals or the society in general. According to Kant, punishment should only be imposed to those who committed crimes. Furthermore, while punishing offenders equality should prevail. Equality, according to Kant’s philosophy, is when the same amount of suffering is imposed on the offender as the suffering that was caused by the crime. However, such suffering should be imposed in a manner that humiliates or degrades the dignity of the criminal (Pratt, 2008: 385).

Accordingly, as stated by Kant, “whatever undesired evil you inflict upon the other within the people, that you inflict upon yourself. If you insult him, you insult yourself. If you steal from

him, you steal from yourself. If you strike him, you strike yourself; if you kill him, you kill yourself". According to Kant's theory, it is better for one man to die than for an entire population to perish. Anyone who commits murder or who orders it or who is an accomplice in it – must also die.

On the severity of punishment, Kant suggests that the severity of the punishment be measured in the same way as the severity of offence. According to Kant, the law of retribution is not only a principle which urges judges to match up the inner wickedness of criminals with appropriate degrees of punishment but it also strives towards giving back to the criminals something undesirably equivalent to what they have taken or destroyed. When combined, what was taken and what has to be repaid must be identifiable and measurable by the court which only focuses on external actions and not inner motions. In determining the proportionality of punishment, Kant insisted that punishment, when morally and physically possible, ought to be the same kind of harm or loss the offender has wrongfully inflicted on his or her victim. Kant wrote "what kind and what degree of punishment does public legal justice adopt as its principle and standard? None other than the principle of equality, that is, the principle of not treating one side more favorably than the other" (Murphy, 1992: 58).

According to Kant (2000: 369), because there is no proportion between life and death and since there is no equality between the crime of murder and the retaliation of it, the execution of the criminal serves right. As he puts it "even if a civil society resolved to dissolve itself within the consent of all its members – as might be supposed in the case of people inhabiting the island resolving to separate and scatter themselves throughout the whole world – the last murderer lying in the prison ought to be executed before the resolution was carried out". Therefore, the equalization of the crime committed and the punishment - for it is only possible by the cognition of the judge extending even to the death penalty as according to the right of retaliation.

5.3.4 The influences of Hegel on the theory of retribution

Both Kant and Hegel are credited with the development of the retributive theory of punishment (Von Hirsch, et.al, 2009: 102). According to Hegel, a German philosopher born in 1770, the

grounds of social unity which are variously called the right in itself, mutual recognition and universal consciousness must be brought to the forefront of human awareness (Hinchman, 1984: 206). Crime divides the society and, as a result, the society should act against it. The role of the crime in defining and strengthening the underlying bonds of social unity according to Hegel becomes visible when its relation to punishment is considered. According to Hegel, to act rightfully means to respect others as persons and accord them the same status that a person himself or herself claims. However, when a person acts wrongfully, such person denies the very continuity or identity of self-conscious existence.

Like Kant, Hegel also emphasized the rationality of offenders. According to Hegel (1952: 69), “punishment is the right of the criminal. It is an act of his own will. The violation of the right has been proclaimed by the criminal as his own right. His crime is the negation of the right. Punishment is the negation of the negation and consequently an affirmation of right, solicited and forced upon the criminal himself”. Hegel bases his theory on the concept of free will (Schild, 2004: 158). As he puts it, “as a living being, the human being can certainly be dominant, i.e. his physical side and other external attributes may be brought under the powers of others. But the free will in and for itself cannot be coerced, except in so far as it fails to withdraw itself from the external dimension in which it is caught up, or from its idea. Only he who wills to be coerced of free will can be coerced into anything”. When the actualization of free will is attacked by the criminal will, the criminal will does not simply appropriate or remove the object in question but, rather, fails to recognize the personal will itself. Therefore, according to Hegel, the criminal will does not only commit harm but also denies the realization of free will.

Although his theory of punishment is closely related to institutionalizing vengeance, unlike Kant, Hegel distinguishes between the retaliation of personal vengeance (as in vendetta) and punishment which is carried out by the community in an improper manner. He then refers to the latter as retribution. Therefore, vengeance degenerates into a bad infinity because retaliation carried against the original criminal does not restore the equilibrium of an impersonal right but instead it appears as a new crime which requires further retaliation. The bad infinity only gives way to the true infinite when the original can be understood as the negation of an already existing and recognized legal order (Hinchman, 1984: 208). Where there is legal order, criminals

do not have to avenge themselves on the specific officers, judges or prosecutors because they understand that they are not acting as individuals in punishing them but rather on behalf of the entire legal system with which they are familiar. According to Hegel, punishment should not evoke an endless chain of retaliation but should take the form of a negation which restores individual rights. As concluded, “retribution is the inner connection of the identity of two determinators which are different in appearance and also have a different external existence in relation to one another. When the criminal meets with retribution, this has an appearance of an alien casting which does not belong to him yet, as we have seen, punishment is merely a manifestation of the crime, i.e. it is one half which is necessarily presupposed by the other. What is at first sight objectionable about retribution is that it looks like something immoral, like revenge and may thus be interpreted as a personal matter. Yet it is not a personal element, but the concept itself which carries out retribution” (Wood, 1991: 129).

5.3.5 Retribution in modern era

Retribution theories in modern times can be traced to various philosophical writings of the 1960s and the early 1970s. In his 1961 study entitled ‘the retributivist hits back’, Armstrong presented a full scale theory and the theories of punishment. He further explained what should happen for the theory of punishment to be wrong. McCloskey (1965) found that a retributivist theory can account more satisfactorily for the notion of justice and punishment. Kleinig (1973: 38) stated that “punishment which is not inflicted by an appropriate authority is, if meted out in the context of a legal or quasi-legal framework, by definition unauthorized, illegal, or unlawful, yet it is still punishment”.

In the 1970s there were greater concerns in the individual sentencing approaches which lead to inconsistencies in the punishments given to two or more offenders for the same offences. As a result, in the United States, the Model Penal Code was designed in 1962. Not only did the code influenced state legislators to adopt a cohesive approach to the establishment of penal law but also advocated the use of certain broad concepts such as the criminal’s state of mind or *mens rea*, on determining the legal status of a crime and the severity of punishment. As a result, the

punishment for a crime would differ based on the offenders' thinking even if the outcome was the same.

5.4 RETRIBUTION AND THE CRIMINAL JUSTICE SYSTEM

In order for justice to take place, a balance must be achieved between the victim of crime and the offender's acts. This is usually attempted through retribution, or trying to rectify an offender's wrongdoing through punishment (Robinson, 2005). In addition to deterrence and incapacitation, the criminal justice system focuses on retribution (Van Ness, 2004: 100).

The criminal justice system provides an alternative to personal or collective vengeance which could lead to cycles of vengeance and violence if it is not stopped in time. Rather than expecting individual victims to prosecute those who have done them harm, the criminal justice system offers a more efficient process by having police, prosecutors and correctional system, amongst others, do the job. Criminal justice exists in order to prohibit citizens from taking the law into their own hands because the ideas of vengeance and personally inflicted retribution are seen as most likely to be disproportionate to the actual offence. By taking over the victimization of the society, the state has the responsibility of working out the appropriate punishments, from a perspective which is more than simply vengeance. Within the retributive theory it is believed that justice is served by punishing the guilty and then the just deserts of the offender not only give the state the right to punish him or her but also the duty to do so.

5.4.1 The relationship between retribution and the police

In determining the goals of the police, one should look at their organization and use of resources. Because the police have a very important role in a democratic society, they must first win the confidence of the people they serve. The following are the principles that underlie policing in a free, permissible and participatory democracy (Paranjape, 2005: 291):

- To contribute towards liberty, equality and fraternity in human affairs
- Not only to help and reconcile freedom with security but also to uphold the rule of law
- To uphold and protect individual human rights
- Contribute towards winning the trust of citizens

- Strengthen the security of persons as well as property
- To investigate, detect and activate the prosecution of offences
- To facilitate movement on highways and maintain public order
- To handle both major and minor crises and help those who are in distress

Failure to practice any of the abovementioned principles not only lead to citizens losing confidence in them but also to a rise in crime. Therefore, the police have a professional responsibility which demands of them the highest standards of conduct such as honesty, impartiality and integrity. However, nowadays, society views the police with fear, suspicion and distrust. As a result of such public loss of faith in them, the police tends to be demoralized to such an extent that they lose self-confidence and are hesitant in taking firm steps to prevent the violation of law because of the apprehension of public criticism.

Retributive considerations influence the way the police respond to apprehend suspects, with arrest and prosecution more likely than release if the offence is a harmful one and the suspect has a criminal record and thus seems blameworthy. The police departments include detectives that specialize in the investigation of the most serious offences and they are allocated resources based on the seriousness of the offence. However, because crime is expensive in terms of resources and its seriousness, it is in this stage that the police may seek retribution. Skolnick (1995: 238) states that “detecting occurs in the context of fluid moral constraints that are circumscribed by a tradition of due process of law, by ever-changing and not altogether clear interpretations of individual rights offered by the courts, and by social organization of policing that develops its own moral norms and constraints”. Because of the multiple contexts of police actions, there seem to be unstable and contradictory norms. As a result, the police turn to deception. Detectives tend to deceive in order to establish grounds for convicting and punishing. Although the process of detecting is informed and controlled by notions of fairness and integrity, such notions are often unclear when it comes to outcome and justification. Deception occurs at three stages of the detecting process, i.e., investigation, interrogation and testimony (Skolnick, 1995: 239)

- **Investigative deception**

In this stage police are allowed by the courts to engage in trickery and deception and they are also well trained to do so. After examining police practices that have been subjected to the highest appellate, one may conclude that police are encouraged to lie. For example, detectives are trained to use informers or to act as informers themselves when the criminal activity under investigation involves possession or sale of contraband. In this case, the contraband itself does not matter that much. Another similar example can be that of burglars. Because victims or the police themselves rarely observe burglars in action, informers are used to apprehend them.

However, the line between acceptable and unacceptable deception in such mentioned patterns is the line between so-called entrapment and acceptable police conduct. In entrapment two approaches are employed, i.e. the subjective and the objective approach. In the subjective approach, the focus is on the background, character and the intention of the defendant. In this approach it is determined whether the defendant was the sort of person who would have been predisposed to having committed the crime, even without the participation of the government official. In the objective approach, the focus is on the nature of governmental participation. The objective approach provides significant limitations on police conduct in the interest of maintaining a civilized or moral conduct, thereby limiting police deception. An example of this can be found in a situation where a police official is not permitted to use torture in order to get a confession from the criminal even if such torture produces the truth. Nevertheless, both subjective and objective approaches allow the police to employ an enormous amount of routine deception. However, unlike the objective approach, the subjective approach permits even more deception.

- **Interrogatory deception**

According to Skolnick & Leo (2001: 254), little information about what happens during interrogation is known because it is kept a secret. They further stated that the following transpires during custodial questioning:

- Interview versus interrogate: warnings must be given to a suspect in custody or whose freedom has been deprived. However, the police tend to question suspects in a non-custodial setting – which is defined more by the suspect's state of mind than by the location of the question – so as to bypass the necessity of rendering wrongs. This is the most fundamental

deceptive strategy used by the police, which is often overlooked. In this approach, the police transform what would otherwise be considered an interrogation into a non-custodial interview by telling the suspect that he or she is free to leave at any time and by making the interview voluntary. As a result, the courts have ruled that police questioning outside the station may be custodial and police questioning inside the station may be non-custodial.

- **Miranda wrongs:** In *Miranda v Arizona*, 384. U.S. 436 (1966) the Supreme Court declared that police cannot trick or deceive the suspect. Police must recite the familiar wrongs when questioning qualifies as custodial. It was also ruled that police are not allowed to ‘soften up’ a suspect prior to administering the warnings.
- **Misrepresenting the nature or seriousness of the offense:** police may misrepresent the nature or the seriousness of the crime after the suspect has waived. For example, police may tell a suspect that the murder victim is still alive, hoping that the suspect will talk.
- **Role-playing:** Manipulative appeals to conscience effective interrogation require that the official identifies different personality traits or acts out of a variety of roles. In acting as a suspect’s friend, the official routinely displays sympathy, understanding and compassion towards the suspect. Not only does the interrogator play the suspect’s friend but he or she may also try to play a role as a brother or father figure and even a therapeutic or religious counselor for the suspect to confess. “There tactics generate an illusion of intimacy between the suspect and the officer while downplaying the adversarial aspects of interrogation” (Skolnick & Leo, 2001: 255). The courts recognize such techniques as they are effective in inducing admissions of guilt.
- **Misrepresenting the moral seriousness of the offence:** This method is widely upheld by the courts and indicated in police training manuals as one of the most effective methods. In this method, officials offer a suspect excuses or justification for his or her actions thereby providing the suspect with an internal attribution of blame that will allow him or her to save face while confessing. For example, the police may convince a person that his or her criminal conduct was because he or she was receiving low pay or working in poor conditions.
- **The use of promises:** The systematic persuasion employed to induce conversation and the admission of guilt often involves the use of promises be it directly or indirectly. The interrogators often promise the suspect that the court will be lenient towards them. The admissibility of a promise thus seems to turn on its specificity. In addition, courts have also

permitted interrogators to inform the suspect that his or her conscience will be relieved if he or she can confess. Furthermore, the suspect is promised that the court will be informed of his or her co-operation or that the evidence of remorse will be a mitigating factor in his or her sentencing. Because such promises create expectations, they are deceptive.

- **Misrepresentations of identity:** Interrogators may hide their identity while interviewing the suspect. For example, it would be impermissible for a police officer to pretend as if he or she is a suspect's lawyer or priest. In this situation, the profession or social group (lawyer or priest) with which the official identifies during the interview might be more significant to resulting in legal judgment than the deceptive act itself, as a result of professional disclosure rules or cultural norms.
- **Fabricated evidence:** Police may confront the suspect with false evidence of his or her guilt in the following manner:
 - Falsely informing the suspect that an accomplice has identified him or her
 - Falsely stating that existing physical evidence, such as fingerprints, bloodstains or hair samples confirm his or her guilt
 - By asserting that an eyewitness or the victim has positively identified or implicated him or her.
 - By staging a line-up in which a coached witness falsely identifies the suspect
 - By subjecting a suspect to a lie-detector test and, regardless of the results, inform the suspect that the test confirms his or her guilt.

- **Testimonial deception**

It is difficult to determine the relationship between permissible investigative and interrogatory deception and testimonial deception (Skolnick, 1995: 239). Because courtroom testimony is given under oath, which is supposed to be the truth, the whole truth and nothing but the whole truth, nobody is supposed to lie. However, when a police official lies in court, he or she may be able to justify such deception on the basis of an alternative set of normative judgments even though such an official is aware that courtroom lying violates the basic norms of the system that he or she is sworn to uphold. Nevertheless, police do lie in the courtroom especially when they believe that judicial interpretations of constitutional limits on police practices are ill conceived or

overly constraining in that they interfere with the policeman's ability to do his or her job as the police subculture defends them.

As long as the theory of retribution is based on the premise that the commission of a crime disturbs the balance of the legal order which will only be resolved once the offender has been punished for his or her crime, it will always have an impact in police work. If a rule of law has been violated or the balance of the scales of justice has been disturbed, the only means by the police can restore it is by means of fair retribution because, in the public eye, the man who rapes, kidnaps, murders or steals deserves to be punished (Tappan, 1960: 242). Such essence of punishment cannot be explained without reference to retribution.

5.4.2 The relationship between the courts and retribution

Retribution as a theory of punishment is based on the idea that punishment is inflicted on the offender because the crime they have committed deserves such punishment. In sentencing, prosecutors and judges seek retribution (Conklin, 2010: 373). Prosecutors consider retribution when making decisions about how to prosecute defendants while judges consider retribution on how to sentence convicted offenders. They both ensure that the offender pays for his or her crime by means of a punishment which should fit the crime. Through suffering the punishment, the offender makes reparations to the society. As agents of the state, both the prosecutors and the judges act on behalf of the society to show disapproval of the crime by inflicting punishment. In the retributive view, not only is it the duty of the offender to make reparations to the state for his or her crime but also the duty of the state to punish the offender.

- **Prosecutor's decision-making:** Every defendant is assumed by the prosecutor to be guilty and who should be punished appropriately by the criminal justice system. By assuming that the defendant is guilty, prosecutors also pressurize the defendant to plead guilty in order to save the courts' time and get a conviction. Because the plea to which the prosecutor will agree is based on the harmfulness of the offense and the defendant's criminal record, offenders are usually punished according to the principle of just deserts.

In their 1987 study, Kenneth Ayers and James Frank made an enquiry into three general issues on the work of the prosecutor i.e. public attitudes towards the seriousness of white collar crime; the use of government sanctions to control white collar crime; and the differential and often beneficial treatment afforded to white collar criminals when compared to other offenders. After conducting a survey amongst 50 prosecutors, the following was revealed:

- Prosecutors in general prefer to use criminal sanctions in cases involving individuals
- Prosecutors prefer civil intervention when organisations are involved in white collar criminality
- The seriousness of the offense is considered the most crucial factor in the decision to prosecute and investigate white-collar crime
- Publicity aspects and political considerations are the least important factors in the decision to prosecute and investigate white-collar crimes
- Prosecutors may play an important part in the prosecution of white collar crime because of the limited resources available in most prosecutors' offices.

Similarly, Roth (1978) studied prosecutors' attitudes towards different offenses. He found that prosecutors thought that white-collar crime was very serious, equivalent to offenses such as kidnapping and rape and more serious than the theft of similar amounts of money by a conventional offender. The prosecutors regarded the amount of money stolen in a crime as being of less important consideration when determining the seriousness of an offense, because the amount available to be stolen was a matter of chance.

- Judges' decision-making: Judges are primarily influenced by the crime that has been committed and the offender's prior criminal record when determining how much punishment a convicted offender deserves. However, there are other extralegal factors that can also affect the sentencing decision i.e. race, income, sex and gender. Legal factors, such as the harmfulness of the crime and the blameworthiness of the offender, have become more important in the sentencing of the offender.

Although some states have adopted determinate sentencing, many still use indeterminate sentencing. In indeterminate sentences, legislators establish long sentences for different crimes and judges impose any penalty up to the maximum. In this approach, sentences range

from the number of years to be served in incarceration with the release date being determined by the parole boards with a view that the offender has been rehabilitated. In determinate sentencing, however, fixed term imprisonment is used. In this approach, the term of imprisonment can be reduced by means of credit for good behavior while incarcerated. Mandatory minimum sentences which stipulate that certain kinds of offenders be sentenced to at least a specified amount of time in incarceration can also be used. In determinate sentences, sentencing guidelines that define a wide range of sanctions for criminal offenses of a given degree of harmfulness committed by offenders of a specific degree of blameworthiness are provided. Most of the decisions made by judges based on the sentencing guidelines have fallen within the required ranges with those that do not follow these guidelines being less severe. These penalties that fall outside the prescribed ranges are because of other factors such as prior criminal history and offense type and severity. “Only retribution provides a basis for the principle that sentences must be proportion with the gravity of the crime” (Rabie & Strauss, 1981: 48). Nevertheless, in the retributive view, it is not only the duty of the offender to make reparations to the state for his or her crime but also the duty of the state to punish. The conclusion is that the clarity of retributivism as a form of punishment depends on whether it is applicable not only on moral arguments about the offender but also sociological assumptions about the degree of agreement in society about harm and how it should be dealt with. The sentencing judges who wish to obtain retribution may be more likely to impose a harsher sentence on criminals whose crime caused the most harm to the victims or to the society. Though these may create plenty of room for conflicts amongst judges or between judges, politicians and different sections of the public, retribution remains an important form of punishment despite its problems.

5.4.3 The relationship between retribution and the correctional system

“The blameworthiness of the offender and the harmfulness of the crime largely determine the kind of institution to which the offender is sent, with maximum, medium and minimum security institutions limiting offenders’ freedom of movement and isolating them from the outside world to varying degrees” (Conklin, 2010: 377). Maximum security institutions accommodate those offenders with negative behavior and who pose a serious risk to staff, other inmates and the

community at large. Offenders in maximum security institutions are restricted in their movement, association and privileges. Offenders who pose a risk to the safety of the community in general are placed in an environment which prioritises and tests responsible, socially acceptable behavior through moderately restricted freedom of movement, association and privileges; they are detained in medium security institutions. In contrast, minimum security institutions accommodate those offenders who pose a limited risk to the safety of the community. Offenders in minimum security institutions have fewer restrictions on their freedom of movement, association and privileges, as compared to those in other categories (Matshaba, 2007: 30).

Sentencing to imprisonment covers a range of years. As mentioned earlier, the decision as to how long an offender stays in incarceration remains with the parole board and not the court as soon as the sentence commences. Such decisions are determined by the harmfulness of the offense, offender's prior criminal record and the offender's conduct while incarcerated. As a result, the decision about how much of a court-imposed sentence the offender serves is mainly based on retributive considerations, even though such a decision is supposed to be based on whether an offender has been rehabilitated or not.

5.5 THE NEGATIVE ASPECTS OF RETRIBUTION

According to Rabie and Strauss (1981: 22), the theory of retribution has frequently been criticized. Sommers (2008) notes that "retaliation cannot undo the harm committed by the offence and it often comes with a significant cost or risk". If punishment is not meant for preventing crime or helping out the victims, then it is useless. Within retribution, punishment certainly does not help the victims except to provide them with a sadistic sense of vengeance. The concept of retribution is based on an old fashioned sense of ethics which is not only irrational, but goes so far as to produce the very suffering that it is intended to prevent.

In his 1978, work "Why do we punish?: The case for retributive justice", Weiler noted two problems with retribution, i.e. the retributivist view on human conditions and the question of how utility and justice can live together comfortably as justifying aims of criminal punishment. With regard to human conditions, Weiler stated that admitting that "retribution is the only

morally defensible theory punishment yet social conditions that exist in modern society render the theory inapplicable” pose a challenge. According to Weiler, if retributivism were to be adopted in modern western society, it would function in such a way as to provide a transcendental sanction for the status quo. Punishment as retribution works better in a community of responsible individuals who are of approximate equality, share the same values and rules which benefit everyone. Punishment in such a community would be justly retributive in that it would flow as an unaccepted consequence of accepted rules which benefit not only the citizens but also the criminal. While these human conditions and the functioning of criminal law might accurately describe certain types of crime one has to consider that typical criminals do not belong to such a community. Most criminals belong to the poorer classes who fail to benefit or participate in the economy of the country; hence, they fail to correspond to the model which underlies retributive theory. As a result, their punishment cannot be justified on retributive grounds. With the excessive and unfair disparity of distribution of material wealth in our society, criminal law serves to protect this unequal distribution. Justifying the punishment of an offender who, for example, steals from wealthy members of the society on retributive grounds may be difficult. Punishing such an offender may only aggregate an existing injustice and inequality in society. Retributive theory requires that lawmakers review the content of the criminal prescriptions in order to assess whether the criminal sanction contributes to or protects an unjustified distribution of wealth and/or a denial of social development.

With regard to utility and justice, one has to bear in mind that a criminal law must not only be effective, it should also be economic and fair. Since the criminal must respond to these potential conflicting goals, it is submitted that retribution should be only one of the justifying aims of punishment. The retributive analysis of punishment challenges the judges and legislators to take into account real life contexts and determine, with reasons, whether the retributive or utilitarian model is significant and to establish a set of priorities for adjudicating between them when they conflict. What retribution focuses on is not whether the justification of punishment will be effective but rather whether the justification of punishment will be just. The morally sensitive man who opts for utility will have to regretfully realize that he is sacrificing an important principle even in a situation where the utilitarian interests outweigh conflicting retributive concerns.

Furthermore, Honderich (1969:23) discusses what he believes are the pitfalls of the theory of retribution as a form of punishment. The first in his arguments is that punishment can never be deserved. Punishment can never be wholly proportionate. Punishing offenders as they deserve requires assessments of their responsibility for their actions. Not only is conducting such assessments an impossible task but also exceeding difficulty. Two things have to be considered when conducting assessment: in order to assess a person's responsibility, introspective knowledge of his or her state of mind during the commission of an offence would be required. Because a person's consciousness cannot be relied upon, full knowledge of the offender's part would be the second aspect that is required in order to determine the degree to which it excuses him or her from convictions. Obtaining information about the offenders' past provides a good deal of history in order to decide what the offender could have avoided doing at any moment.

Second, in Honderich's arguments against retributivism, is that simply saying a person deserves a penalty is not giving anything that could be regarded as a reason for punishment. Simply saying a person deserves a penalty is not only a morally insufficient reason but also something that is not a reason at all whether good or bad. Three claims were mentioned in this regard. Firstly, is that an institution such as punishment can only be justified by indicating that it has advantageous consequences. Secondly, such institution of punishment can only be justified by providing reasons based on something else that is accepted as valuable. Thirdly, Honderich (1969: 29) stated that it is pointless to argue in such a way that the argument reduces to assertion that something is right because it is right.

Thirdly, one must regard retributivism as not offering logically possible justification of punishment at all, or else as consisting in a certain disguised utilitarianism, a disguised attempt to justify punishment by its supposed deterrent or reformatory effects. Fourthly, in Honderich's arguments is the fact that offenders have been responsible for action with the knowledge that such actions carry with them certain possible consequences. Although the nature of punishment is unclear, this has usually been taken to be a reason for imposing punishment. Through their actions, offenders have gained satisfaction unlike non-offenders. Therefore, punishing offenders contributes to the re-establishment of some earlier state of equality in terms of satisfaction and

distress. Because offenders have freely decided to commit an offence, punishing such offender gives satisfaction to his or her victims and others. However, as indicated early, the nature of such punishment remains unclear. As a result, three elements remain clear: (i) whether the deprivation imposed by punishment on the offender is outweighed by the satisfaction gained by the victims and other as a result of such deprivation; (ii) whether the course of punishment can be defended by the principle of equality; and (iii) whether the deprivation of such punishment is outweighed by the satisfaction of grievance and the value involved in the facts that the offender has voluntarily offended.

5.6 RETRIBUTIVE JUSTIFICATION OF PUNISHMENT

Punishment, in its very concept, is favorably perceived as a retributive practice. On the retributive justification of punishment, Rawls stated that “punishment is justified on the grounds that the wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt and the severity of the appropriate punishment depends on the depravity of his act” (Corlett, 2001: 23). Punishment is viewed as deserved because of the actions of the offender. Unlike in forward-looking approaches where what will do good for the future is determined, the backward-looking approach - which is retribution - attempts to determine who has done good or harm in the past and acting in some way to fittingly treat those who have done either. As mentioned earlier, retribution is the oldest justification of punishment which was designed to satisfy the needs of the people for a type of closure that satisfies the morale of society. Retribution imposes the perfect amount of punishment, in theory, because the offender is injured by the state to the exact degree that he or she has caused injury. Furthermore, Butler (1998: 79) states that retributivists believe that punishment should fit the crime in the following two ways. Firstly, the wrongs imposed on society by the offender’s conduct should be equal to the cost imposed on the offender when he or she is punished. Secondly, the costs that are imposed on the offender for his or her offence should be equal to the costs imposed on the offenders for other crimes that cause the same damage. Therefore, retribution is concerned with two liberal ideas: individual autonomy and equality.

In addition, Honderich (2006: 23) analyses the following 13 backward-looking reasons for the justification of punishment on retributive grounds.

- A person is punished because he or she broke the law
- It is only right that the offender gets punishment
- There is essential good in precisely the suffering of the offender – as distinct from what causes it, the penalty
- A relationship exists between the culpability of the offender's behavior and the distress of the proposed penalty
- The penalty that is imposed on the offender on the imposed would cause roughly as much distress to the offender as he or she caused to someone else by his or her offence
- By offending, the offender forfeited certain rights
- Suffering the offence and suffering the punishment are such that people would be indifferent between the first and the second
- The punishment adequately reflects a degree of innocence
- Punishment annuls an offence in that it restores a moral principle which itself has a kind of independent spiritual reality
- Offenders have a right to get the punishment that in their rationality they recognize that they have an obligation to get
- If the offender had considered the matter of punishment and acted rationally, he or she would have agreed to the social arrangements under which he or she is being punished
- The offender consents to give up his or her immunity to punishment, which is in turn the gaining of a power by officers of the society
- Offenders choose to put down a burden, take a proscribed satisfaction-in-acting. Punishment puts such a burden on them, thereby asserting a distribution of such burdens and benefits.

5.7 MISCONCEPTIONS ABOUT RETRIBUTION

There are various misconceptions about retribution (Bradley, 2003), (Murphy, 1971), (Gendin, 1970) and (Moore, 1987), these are:

- Retribution is revenge. As indicated earlier, some people often confuse retribution with revenge. This is the most common misconception. Revenge is a personal response and it is imposed by the one who was hurt. Generally, anyone else who feels that he or she has been aggravated personally by the original injury may seek revenge. Revenge is mainly associated with anger and whoever is seeking it is not likely concerned with the rules as to how much he or she should strike back. Unlike revenge, in retribution rules indicating what is appropriate are followed. Retribution is lawful justice as it presupposes the surrendering of primitive freedoms for the benefit of civilized society. While revenge is personal and private, retribution is exacted by parties which have no interest in the matter. Those who seek revenge are only interested in imposing suffering on their victims.
- Associating retribution with the concept of *lex talionis*, the law of retaliation, or an eye for an eye or with a kind of punishment such as the death penalty always causes confusion. Retributivists are not committed to any particular penalty as being deserved. Retribution is not driven by anger, hatred or any other emotion, as such it is completely distinct from community outrage. In the concept of *lex talionis*, it is difficult to apply punishment consistently. As a result, societies typically deprive offenders of their human resources such as time, money and life which have no relation to the particular criminal harm. Regardless of the crimes committed, most primitive societies impose pains and humiliation on criminals which makes applying eye for an eye forms of justice as the norm in civilized communities difficult. For this to take place, in civilized communities, they should not only be logistically but also morally prepared to do anything that the criminal has done to them.
- Exacting retribution means satisfying the feeling of the injured. Retribution is not concerned with satisfying the feeling of the victims. In this theory it is not guaranteed that the victim will feel better as a result of the retribution exacted on the offender. It is not permitted for the injured party to take the law into their own hands. In addition, those who administer punishment should not do so with the aim of ensuring that the injured party gets satisfaction. Like civil law, criminal law could include a system of restitution but justice would require some fixed system of deterring the amount to be restored. However, there are certain circumstances that can make restitution impossible or impractical. Nevertheless, the possibility of retribution being ruled out exists; hence, the misconception.

- Retributivists welcome suffering for its own sake. There are two interpretations which are to pain with regard to retributivists, i.e. that retributivists think that pain is essentially good and that the theory of retribution is based on the idea that evil should be returned for evil. If considering the second interpretation, and if imposing a punishment on an offender is returning evil for evil, then it does not matter who is responsible for imposing such punishment – it is much like debating whether the judge thinks of himself or herself as a retributivist or a utilitarian. The utilitarian's right course of action is not to condemn the retributivist theory but rather to condemn the punishment. The retributivist has no point of disagreeing if the utilitarian believes that the punishment imposed is lesser evil or should be lesser evil than that committed by the criminal. However, utilitarians are the ones who refer to punishment as returning evil for evil. Unlike utilitarians, retributivists do not accept that punishment is the infliction of evil.

Returning to the first interpretation, it can be concluded that the retributivist does not think pain is intrinsically good. This is mainly because some sufferings that are imposed on the guilty parties are irrelevant to the problems of punishment. For example, in a case where a person breaks his or her leg in the course of committing crime, there is no retributivist who can say he or she is legally liable then he or she should not be punished. What retributivists welcome is not pain qua pain but rather of punishment, pain qua punishment.

- Punishment undoes the criminal deed. The view that punishment can undo the evil is not a retributivist notion but a theory which claimed punishment undoes evil would not be immoral but simply an error. In a case where A kills B, killing A would not undo B's death or undo the damage. It would be excellent justification if punishment could undo evil. Therefore, it is immoral to exact retribution with the knowledge that the evil cannot be undone.
- Retribution is incompatible with forgiveness. Many utilitarians, who believe that one should forgive someone who has angered them, feel that retributivism's shortcoming is that it is incompatible with forgiveness. However, one should note that not only is forgiveness a stumbling block for retributivism but for utilitarianism as well. For, if forgiving someone requires lessening the offender's punishment then forgiveness may be incompatible with deterrence. For example, if all first time offenders were forgiven, such a tendency might encourage criminal activities. Forgiveness is not only personal but also consists of maintaining a well-disposed attitude towards the person who has offended you. Forgiving a

person does not mean lessening an offender's rightful punishment. Although some view it as very wrong to lessen rightful punishment, they do not, however, state that forgiveness is wrong. Therefore, retribution and forgiveness are perfectly compatible.

- The generally considered right to be punished. As in the theory of Kant and others, retributivists believe that offenders have the right to be punished. Through punishment, an offender is reminded of his or her responsibilities. Failure to impose such punishment will imply that an offender is merely a victim of forces or that he or she lacks moral sensibility. The distinctive aspect of retributivism is that the moral aspect of the offender is a sufficient reason for punishment of the offender. Other reasons that might be added for punishment to be justified include crime prevention. However, there is no room for additional reasons such as crime prevention in retribution. Preventing future criminal activities through punishment is not part of the justification of punishment for retribution but a surplus.
- Retribution as a theory of formal justice. Retribution is often confused with the theory of formal justice. However, retribution is not concerned with the application of a general principle of justice, namely, that equals should be treated equally and that unequals should be treated unequally. Unlike retribution, the principle of formal justice states nothing about punishing anybody for anything and it only states that when punishing, such punishment should be done equally. Retribution tells us little about what a particular offender's punishment should be or even how to define a range of acceptable punishments for a given crime. It is up to the legislative and judicial authorities to make the important choices in sentences regarding fairness and proportionality.

5.8 RETRIBUTION AND UTILITY

In his 1971 essay, Michael Lessnoff made a distinction between utilitarian and retributive theories of punishment. He stated that in retributive theory “what justifies the suffering inflicted by punishment is the moral culpability of the behavior that is punished; that persons who have committed morally wrong acts (or at least seriously culpable ones), and only such persons ought to be punished; and that the severity of punishment ought to be so far as possible, in proportion to the moral culpability of the act punished”. In terms of the utilitarian theory he noted that “it is entirely by its beneficial consequence that punishment is justified, and not by any obligation to

visit suffering on the proportion of immoral acts specifically, punishment is justified in so far as it tends to reduce the occurrence of crimes, that is, of seriously undesirable or bad acts”.

In utilitarianism, the rightness or wrongness of an action is determined by balancing the good over the evil that is produced by that action. Mill (1979: 14) associated good with happiness and evil with unhappiness. He also noted that the greatest happiness should belong to the greatest number. Utilitarians attempt to anticipate the likely consequences of carrying out punishment when determining whether punishment is justifiable or not; in this regard, punishing an offender shows the greatest balance of happiness over unhappiness, then such punishment is justified. If there is another available option which would produce a greater balance of happiness over unhappiness, then such an option to be chosen as punishment is unjustified.

Because crime produces a lot of unhappiness amongst the society, so in seeking to promote a state of affairs in which the balance of happiness over unhappiness is maximized, a utilitarian will be very concerned with reducing crime. There are three traditional ways identified by utilitarians that can ensure that punishment reduces crime. Firstly, offenders who are aware that committing a certain crime may lead to a conviction, they will be less likely to commit the crime (deterrence). Secondly, offenders who are detained for a certain period of time are less likely to harm others during that period (incapacitation). Thirdly, the characters of offenders can be improved through punishment (rehabilitation). In addition to the three traditional utilitarian approaches, there are other ways in which punishment can affect the balance of happiness over unhappiness. For example, whether or not the offender is punished, the society will always be affected by the actions of the institution that has the responsibility to punish those who violate the law.

In terms of the utilitarian view of punishment, Rawls stated that “on the principle that by-gones are by-gones and that only future consequences are material to present decisions, punishment is justifiable by reference to the probable consequences of maintaining it as one of the devices of social order... if punishment can be shown to promote effectively, the best interest of the society, it is justifiable, otherwise it is not” (Corlet, 2001: 24). Furthermore, utilitarians hold that no

official should have the discretionary power to inflict punishment on the offender whenever he or she believes it would benefit the society.

There are various types of utilitarianism. Fatic (1995: 25) mentions ‘act utilitarianism’ and ‘rule utilitarianism’ as the most commonly recognized types of utilitarianism. In ‘act utilitarianism’ it is determined whether the consequences of particular actions are taken into account while ‘rule utilitarianism’ implies that these actions are justified and belong to a type of action which tends to produce good consequences in the final calculation.

Like retribution, the doctrine of utilitarianism also has its shortcomings (O’ Driscoll, 1977: 158). Its shortcomings are as follows:

- It allows for the punishment of the innocent
- It is not clear whether it is more likely to serve the purpose of deterrence
- It does not take into account the offenders’ personality and the need to treat everyone fairly and justly
- It allows the offender to be treated as a means only and not as an end in himself or herself without respect for his or her human self or without any reference to his or her responsibility for actions (Fatic, 1995: 26).

5.9 COTTINGHAM’S VARIETIES OF RETRIBUTION

In his 1979 essay, John Cottingham discussed nine varieties of retribution.

- Repayment theory: Many authors according to Cottingham view retribution as a method of repayment. The notion of paying back encompasses the basic or fundamental sense of retribution. Because the criminal has victimised the society, it is his or her responsibility to repay the debt to the society. In the standard theory of retribution, punishment is imposed in order to make the offender pay for his or her offence. However, little is known as to how or why suffering something unpleasant, for example, being incarcerated for a certain period, counts as payment for an offence. Cottingham argues that it is difficult to see how punishments such as imprisonment can repay society for whatever damages that has been

caused (Walker, 1999). Nevertheless, one should admit that this notion is both ancient and widely held. An example of this can be found in Biblical times in the Pauline Doctrine of Atonement where it was mentioned that the suffering of Jesus Christ is supposed to pay for the offences of mankind.

- Desert theory: Retributive punishment is regarded as punishment that is imposed because it is deserved. According to Walker (1999), Cottingham takes what Ted Honderich wrote in his book “punishment: the supposed justification” to be an example of what he calls desert theory: the essence of retributivism is that punishment is justified simply because it is deserved. Desert theory, according to Cottingham, is different from repayment theory because it is not grounded in the original meaning of retribution.
- Penalty theory: In the penalty theory, Cottingham based his argument on Kant’s principle which states that punishment is always imposed because the individual on whom it is imposed has committed a crime. Breaking of the law is seen as sufficient reason for just punishment. Cottingham made further reference to JD Mabott’s 1939 work where he stated that “they had broken a rule and they know it and I know it; nothing more was necessary to make punishment proper”. However, Cottingham is not clear as to whether the mere breach of a rule is enough to serve as a justification for punishment.
- Minimalism: The principle of minimalism is “permissible but not obligatory to punish the guilty, and only the guilty” (Walker, 1999). It does however allow the nature of punishment to be determined by consequentialist considerations. It is based on the notion that no one should be punished unless such person is guilty of a crime. Minimalism asserts that guilt is a necessary condition for just punishment. With regard to minimalism as a retributive theory, Cottingham is doubtful. He noted that the most likely explanation for classifying minimalism as a kind of retribution is found in history where a connection is made between proper punishment and past offence for it to be classified as retributivist. Cottingham further stated that even though such a connection can be made between proper punishment and offence, it leads to confusion because minimalism can be described as a principle of natural justice or as a utilitarian secondary rule and not retribution. An example of this can be found in Hart (1968:23) who defended minimalism but failed to connect it with retribution and insisted that it is instead concerned with principles of simple justice and in particular the need to guarantee a method of social control which maximizes individual freedom.

- Satisfaction theory: According to Cottingham, an offender is punished because his or her punishment gives satisfaction to other individuals. There should be a connection between the pain suffered by the victim of an offence and the satisfaction that the victim gets from the suffering of the offender. For these reasons, Cottingham stated that satisfaction theory takes two forms. Firstly, it is intrinsically desirable to match the victim's grievances with the offender's suffering. Secondly, Cottingham provides a more sophisticated version of satisfaction theory by quoting Judge Steven Fitzjames (1890) who stated that "a general view of the criminal law of Scotland" stated that "the criminal law regulates sanctions and provides a satisfaction for the passion of revenge". Cottingham further noted that if the underlying idea is that the penal system provides a substitute for private revenge then such justification cannot be retributive but rather utilitarian. This is mainly because, in a utilitarian approach, the penal system is justified as a proper means of preventing personal confrontation which in turn not only makes society better ordered but also secured.
- Fair play theory: Failure to punish offenders who break the law is unfair to those citizens who respect the law and the rights of others at all times. In retribution, the view is that an offender is punished because he or she has gained satisfaction through the commission of the offence. Cottingham makes reference to Rawls who stated that each citizen has a duty to obey the laws of which he or she disapproves because it is unfair to his or her fellow citizens. If he or she voluntarily accepts the benefits of the social system without being prepared to shoulder his or her share of its builders (Rawls, 1964: 3). Because the offender profits from refusing to play fair and respect other people's rights, the state then is justified in punishing the offender in promoting the good. For these reasons, Cottingham concluded that the fair-play theory can be described as retributive because its object of punishment is to seek justice and maintain fair play. The justification of punishment in this theory is not focused on the offender but rather the law abiding citizen. Not only would the failure to punish be unjust to others but it will also be intrinsically appropriate.
- Placation theory: In his philosophy of law, Kant argued that even if a society were to dissolve itself, it must first execute all its murderers in order to ensure that the blood guilt will not be fixed on the people (Walker, 1999). However, Cottingham argues that this is not genuine retribution because the aim of executing offenders would be to avoid the consequence which is sharing of blood of guilt. Justification, in this example by Kant, seems heavily tied up with

Old Testament notions of sacrifice and placation. Spilling the blood of the guilty ones will lead to the placation of those affected. For these reasons the placation theory is consequentialist as it looks forward to the desired result of satisfying good.

- Annulment theory: Punishment is imposed in order to annul the crime which would otherwise have been held valid, and to restore the right. The righting of the wrong is the primary and fundamental attitude in considering crime. Like in the placation theory, Cottingham also states that the annulment theory is not retribution. He stated that combining the aim of the annulment or restitution theory and that of retribution will result in confusion. However, Cottingham noted that the annulment theory can be combined with the repayment theory. For example, if person A smashes person B's window, person A has to repay person B by paying for replacing the window.
- Denunciation theory: As stated in section 53 of the Report of the Royal Commission on Capital Punishments "the ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime". Cottingham stated that it is doubtful whether the denunciation theory is retributive. Even though exacting retribution constitutes the denouncing of crime, one can exact retribution quietly or in secret without denouncing it. Moreover, it is possible to denounce a crime without exacting retribution.

5.10 SUMMARY

As a result of criminal activities, offenders benefit and victims lose. However, punishment makes it possible for the offender to pay for the harm he or she has caused. Retributive justice tries to balance any unjust advantage gained by the offender by ensuring that he or she also suffers a loss. Through retribution, an offender is considered to have received punishment that is morally right and fully deserved. Retribution implies "to give in return for" and "to punish suitably". Punishment hardly increases happiness. Because punishing people is harmful, painful and unpleasant, it does indeed need justification. As discussed in this chapter, retribution is the oldest justification of punishment.

Because retribution is currently considered a proper and prominent goal in the sentencing process, it is best to understand not only its relationship with the courts but also its relationship

with the entire criminal justice system. In this chapter, the relationship between retribution and the police, the courts and the correctional system was discussed because there should be a balance between the criminal's punishment and the victim's suffering. It was uncovered in this chapter that both Kant and Hegel played an important role in the development of the theory of retribution. Like deterrence, retribution also has its negative aspects because it is very ancient. It is difficult to determine the proportionality between crime and punishment. The differences between revenge and retribution were also outlined in the chapter.

CHAPTER 6

STATISTICAL REPORT ON SURVEY DATA ON CRIME PREVENTION AND SENTENCING

6.1 INTRODUCTION

This chapter presents the statistical report on the survey conducted on crime and sentencing trends in courts under the jurisdiction of Thohoyandou in the Limpopo Province. The data is presented in the form of two sections. The first section (section 6.2) provides a background on the performance rating scores for magistrates' sub-regions based on the statistics of regional offices. The main aim of providing performance-rating scores for each sub-region was to assess whether proven magistrate-performance per sub-region affected respondents' perceptions on the objective of sentencing and crime prevention. The second section (section 6.3) provides an analysis of the results and the interpretations of the findings from the questionnaire. As indicated in Chapter 1, the questionnaire was completed by all the Judges and Magistrates within the jurisdiction of Thohoyandou High Court, Sibasa Regional Court and all the eight sub-offices of the Thohoyandou Regional Office. From the questionnaire, the respondents were asked to provide their views with regard to the sentencing process (section B), the continuous use of imprisonment as punishment (section C) and the objectives of sentencing, continued imprisonment and crime prevention (section D).

6.2 BACKGROUND ON THE PERFORMANCE RATING SCORES FOR MAGISTRATES' SUB-REGIONS BASED ON STATISTICS OF REGIONAL OFFICES

As indicated above, the objective of the rating of the sub-regional offices was to assess whether proven magistrate-performance per sub-region affected magistrates'/judges' (as respondents) perceptions on the objective of sentencing and crime prevention (section D of the questionnaire). Dimensions (or constructs) of the objective of sentencing and crime prevention were identified in the study as follows:

- Punishment and the interest of society
- Punishment: Judges' argumentation on punishment

- Placing the offender in context of punishment
- Punishment and the interest of the victim

Once the rating of proven performance was completed per sub region (explained below), two-way frequency tables, Pearson's exact chi-square tests and Cochran-Armitage trend tests were conducted on the pair-wise comparisons of performance ratings and objectives of sentencing perception-scores for each dimension listed above.

6.2.1 Ranking strategy for the calculation of proven sub-region magistrate-performance

Data obtained from the sub-regional offices included figures on the number of magistrates residing in each sub-region; the required number of judges per sub-region; the total number of lost hours, the total backlog indicated in weeks, and the total number of outstanding cases per week.

It was argued that the total number of lost hours, the total backlog indicated in weeks, and the total number of outstanding cases per week indicated, to some degree, how effectively each sub-region performed their duties. By scaling these figures to a uniform standard of indicators – expressing the figures in terms of one magistrate per sub-region – figures per region become more justifiably comparative. The adjusted indicators could then be ranked according to each criteria and ranks per respondent added to report an initial performance score per sub-region. However, these initial rating scores do not bring into account the fact that some sub-regions are understaffed and others are overstaffed. By calculating a ratio of actual to required staff per sub-region and multiplying this with the initial performance rating for each sub-region, 'compensation' is built into the rating structure with regards to staff allocation.

Table 6.1 reports on the calculated performance-scores and ranking.

Table 6.1 Calculation of sub-region magistrate offices' performance scores based on actual and required number of magistrate per sub-region, backlog in week per magistrate, outstanding cases per magistrate and hours lost per magistrate										
Sub regions	No of magistrates		Score & (final rank)	Backlog in weeks		Outstanding civil, criminal cases		Hours lost		Sum : ranks
	Actual (re-quired)	Ratio: actual / required		Actual no. (per magistrate)	Rank	Actual no. (per magistrate)	Rank	Actual hours (per magistrate)	Rank	
Thohoyandou	9 (6)	1.5	22.5 (8)	6 (0.67)	1	766 (85.1)	6	289 (32.1)	8	15.0
Louis Trichardt	3 (3)	1	14.5 (6)	4 (1.33)	2.5	241 (80.3)	5	75 (25.0)	7	14.5
Musina	2 (2)	1	19.5 (7)	12 (6.00)	7.5	253 (126.5)	8	-15 (-7.5)	4	19.5
Tshilwavhusiku	2 (2)	1	12.0 (4)	5 (2.50)	5	50 (25.0)	1	15 (7.5)	6	12
Dzanani	4 (5)	0.8	7.2 (1)	6 (1.50)	4	206 (51.0)	2	-54 (-13.5)	3	9
Waterval	2 (3)	0.67	9.4 (2)	6 (3.00)	6	193 (96.5)	7	-102 (-51.0)	1	14
Mutale	2 (2)	1	10.5 (3)	3 (1.33)	2.5	107 (53.5)	3	-4 (-2.0)	5	10.5
Tiyane	1 (1)	1	13.5 (5)	6 (6.00)	7.5	77 (77.0)	4	-46 (-46.0)	2	13.5
Performance score = magistrate-ratio x Sum of ranks of (backlog, outstanding cases and hours lost per magistrate)										

Once the ranks were determined for the sub-regions, the sub-regions were classified as either 'satisfactory' or 'poor' performers as indicated in Table 6.2, below. Proven performance ranks were categorized (thus condensed into fewer categories) to ease the assessment of the effect of proven performance on perceptions regarding the objectives of sentencing. (The four listed dimensions).

Table 6.2 Classification of performance-scores of sub regions as ‘poor’ or ‘satisfactory’ performers.			
(Sub-region)	performance rating		
Frequency	satisfactory (rank 1-5)	poor (rank 6-10)	Total respondents
Dzanani	3	0	3
High court - Thohoyandou	0	3	3
Louis Trichardt	0	3	3
Messina	0	2	2
Mutale	2	0	2
Thohoyandou	0	9	9
Tiyani	1	0	1
Tshilwavhusiku	2	0	2
Total	8	17	25

6.2.2 The effect of proven sub-regional magistrate-performance on perceptions of the objectives of sentencing (section D)

The two-way frequency tables, Tables 6.3 – 6.6, which follow display and assess the statistical significance of the effect of the level of magistrate performance ('poor' and 'satisfactory' performance) on respondents' perceptions ('disagree', 'undecided' and 'agree') of the dimensions of the objectives of sentencing.

The statistical significance of the effect of proven performance is evaluated by means of Chi-square tests and Cochran-Armitage trend tests. The two tests indicated that the statistical significance of the effect of proven magistrate-performance on perceptions, could only be established for the dimension of the judges' belief or stance on the objectives of punishment. (Please refer to Table 6.6 and deductions discussed below the table).

Table 6.3 Perception ratings. Effect of proven performance on perceptions on the objectives of punishment: Punishment and the interest of society			
Punishment: Community values, prevention, control, etc	proven performance		
Frequency Cell Chi-Square Row Pct	satisfactory (rank 1-5)	poor (rank 6-10)	Total
agreement	6 0.0576 35.29	11 0.0271 64.71	17
undecided	2 0.0257 28.57	5 0.0121 71.43	7
disagreement	0 0.32 0.00	1 0.1506 100.00	1
Total	8	17	25
Exact Probability of (chi-square statistic = 0.59) = 0.99 Probability Cochran-Armitage Z statistic = -0.76) = 0.25			

Table 6.4 Perception ratings. Effect of proven performance on perceptions on punishment: Punishment and the interest of the victim			
Victim(Punishment: Just punishment & victims)	proven performance		
Frequency Cell Chi-Square Row Pct	satisfactory (rank 1-5)	poor (rank 6-10)	Total
agreement	5 0.0083 33.33	10 0.0039 66.67	15
undecided	3 0.0756 37.50	5 0.0356 62.50	8
disagreement	0 0.64 0.00	2 0.3012 100.00	2
Total	8	17	25
Exact Probability of (chi-square statistic = 1.06) = 0.69 Probability Cochran-Armitage Z statistic = -0.40) = 0.34			

Table 6.5 Perception ratings. Effect of proven performance on perceptions on the objectives of punishment: The context of punishment for the offender			
Punishment: Effect on offender	Proven performance		
Frequency Cell Chi-Square Row Pct	satisfactory (rank 1-5)	poor (rank 6-10)	Total
agreement	7 0.2669 38.89	11 0.1256 61.11	18
undecided	0 1.28 0.00	4 0.6024 100.00	4
disagreement	1 0.0017 33.33	2 0.0008 66.67	3
Total	8	17	25
Exact Probability of (chi-square statistic = 2.28) = 0.34 Probability Cochran-Armitage Z statistic = -0.74) = 0.23			

Table 6.6 Perception ratings. Effect of proven performance on judges' stance/ or perceptions on the objectives of punishment			
Punishment:judgement considerations)	Proven performance		
Frequency Cell Chi-Square Row Pct	satisfactory (rank 1-5)	poor (rank 6-10)	Total
agreement	1 1.5125 10.00	9 0.7118 90.00	10
undecided	6 0.8138 46.15	7 0.383 53.85	13
disagreement	1 0.2025 50.00	1 0.0953 50.00	2
Total	8	17	25
Exact Probability of (chi-square statistic = 3.71) = 0.17 Probability Cochran-Armitage Z statistic = 1.78) = 0.03*			

The statistical significance of the effect of proven magistrate performance on the judges' stance on the objectives of punishment was established with the Cochran Armitage trend test. Statistical significance is indicated on the 5% level of significance. This finding implies that judges' punishment-perception trends over the levels of agreement (agree, undecided, disagree levels) differ statistically significantly for 'poor' and 'satisfactory' categories of performers. The satisfactory performers tended to be more 'reserved' on their stance that culpability, type of offence, criminal record and sentencing preferences should guide their verdict, whereas the poor performers are in agreement with this stance.

The information retrieved from the sub-regional offices allowed the researcher to calculate a measure of proven performance of the effectiveness of magistrates/offices at sub-regional offices; to categorize areas/magistrates according to poor and satisfactory performers and to investigate the effect of performance on perceptions regarding the objectives of punishment on four different aspects. The findings indicated that judges' perceptions or stance towards punishment was statistically significantly influenced by their level of proven performance

6.3 ANALYSIS STRATEGY AND RESULTS

6.3.1 Analysis strategy based on research questions to be answered and format of the questionnaire

The analysis strategy designed for the study was aimed at addressing the research objectives and hypotheses of the research, and included:

- **Section 6.3.2.1: Frequency tables on biographical background of sampled respondents** (which assisted in describing the research sample and allowed the researcher to describe the sampled respondents as representative of the target population)
- **Section 6.3.2.2: Six composite frequency tables on each of the subsets of items that queried an aspect of the sentencing process;** and one-way frequency tables on two additional aspects of the sentencing process. **Pearson's Chi-square tests** calculated on the frequencies of the composite tables. Detailed information on the composition of perception trends expressed in the construct scores can be derived from the subset of response frequency distributions on issues that describe an aspect of the sentencing process.
- **Section 6.3.2.3: One composite frequency table and a Pearson's Chi-square test** on the frequencies questionnaire statements that queried respondents' **perceptions of the continued use of imprisonment** as a sentencing option
- **Section 6.3.2.4 and 6.3.2.5: Four composite frequency tables** and associated Pearson's Chi-square tests on the frequencies of the four tables to investigate views on **the deterring, rehabilitative and retributive effect of punishment** related to listed crimes. The Chi-square tests investigated the dependencies between various crimes and either the deterrent, rehabilitative and retributive effects of the punishment. A similar table on the continuous use of imprisonment related to crime prevention and objectives of sentencing were also calculated. This last mentioned subset of questionnaire items was further investigated and slit into sub-sections as described in the next sections of the analysis strategy.
- **Section 6.3.2.6: Preliminary exploratory factor analysis:** Although the number of respondents was very limited the data structure of the fourth subset of questionnaire **items on the continued use of imprisonment** was investigated for underlying perception-dimensions (or factors) to simplify and address the research question on perceptions regarding the

continued use of imprisonment more directly and specifically (for example punishment in accordance with societal-value system regarding crime prevention; or, the effect of punishment (imprisonment) on the offender; or the authority/ support for the victim when sentencing involves imprisonment; or principles abided by in judgement decisions involving imprisonment, etc.)

- **Section 6.3.2.7:** Underlying dimensions (or factors) identified as separate issues of the continued use of imprisonment **were evaluated for internal consistency reliability** by means of scale reliability testing. This type of reliability tests whether the subset of questionnaire items that describes a perception-dimension or construct all contribute towards explaining the factor or construct and whether a measure – derived from the responses of respondents on this subset of questions reliably measure the construct.
- **Section 6.3.2.8: Calculation of construct scores:** Once the internal consistency reliability of constructs have been established, it can be assumed that perception measures calculated on the ratings of questionnaire items truly express respondent views on these aspects of continued use of imprisonment as a crime prevention method or objectives of sentencing. A measure of respondents' perceptions on each construct (imprisonment dimension) is then calculated as the mean perception rating of each respondent on the subset of questionnaire statements that describe a specific imprisonment aspect. The calculated measure is referred to as a construct score. The construct scores of individuals and the construct mean scores for each imprisonment aspect describes respondents' general perceptions regarding the dimension of imprisonment. For example, punishment in line with society's value system on crime prevention.
- **Section 6.3.2.9: Two-way frequency tables** (cross reference tables), **on a set of imprisonment construct scores (for example societal values and punishment) and a biographical attribute (such as gender)** to evaluate the effect of biographical properties on perceptions re imprisonment as punishment. Cochran–Armitage trend tests, calculated for each cross reference table, also assist in determining perception trends. In addition, **Bar graphs** to illustrate the effect of biographical attributes on perceptions re imprisonment as crime prevention strategy were also presented.

All analysis presented in the chapter was conducted using the Statistical Analysis System (SAS) version 9.2 statistical package.

6.3.2 Analysis of results and interpretations

6.3.2.1 Biographical background

This section assisted in describing the research sample and allowed the researcher to describe the sampled respondents as representative of the target population. As indicated in Chapter 1, of the study, the sample was limited to the jurisdiction of the Thohoyandou High Court, Sibasa Regional Court and the Thohoyandou Regional office with its 8 regional sub-offices. In order to obtain a 100% response rate, all judges completed a questionnaire. Frequency distributions of biographical properties of respondents are presented in Table 6.7.

Table 6.7 Frequency distributions of the four biographical backgrounds of respondents probed in section 1 of the questionnaire									
Biographical categories	F_i	%	Cum F_i	Cum %	Biographical categories	F_i	%	Cum F_i	Cum %
Age					Race				
30-39	1	3.23	1	3.23	African	21	67.74	21	67.74
40-49	9	29.03	10	32.26	Coloured	1	3.23	22	70.97
50-59	18	58.06	28	90.32	Indian	1	3.23	23	74.19
60+	3	9.68	31	100.00	White	8	25.81	31	100.00
Condensed age categories					Condensed race categories				
<50	10	32.26	10	32.26	Black	21	67.74	21	67.74
50+	21	67.74	31	100.00	Other	10	32.26	31	100.00
Experience					No of cases handled per day				
< 1 year	1	3.23	1	3.23	1-3	4	12.90	4	12.90
4 - 7 years	2	6.45	3	9.68	4-7	14	45.16	18	58.06
8 - 11years	8	25.81	11	35.48	8-11	9	29.03	27	87.10
12 - 16 years	8	25.81	19	61.29	12-16	1	3.23	28	90.32
>16 years	12	38.71	31	100.00	16+	3	9.68	31	100.00
Condensed experience categories					Condense number of cases handled per day				
1-11 yrs	11	35.48	11	35.48	1 - 7	18	58.06	18	58.06
12-16+ yrs	20	64.52	31	100.00	> 7	13	41.94	31	100.00
Gender									
Female	6	19.35	25	80.65					
Male	25	80.65	31	100.00					

Table 6.7 indicates that the majority of the sampled 31 respondents (58.06%) were aged between 50 and 59 years. 67.74% of the respondents were African. The majority of the respondents were males who made up 80.65% of the sample. Respondents with more than 11 years experience made up 90.32% and those who handled less than seven cases per day made up 58.06%. It can be deduced that the sampled respondents were a more experienced group and consisted of mature/older people. The outcome of the findings of the study should thus be viewed against the background of the qualities of the people that participated in the study.

Please note that Table 6.7 also includes a few tables on attributes with condensed categories. This was included to indicate in which way categories that were sparsely populated have been combined to ensure that investigation of the effect of these properties on perceptions - investigated in further analyses - lead to unbiased results. By comparing these properties of the

sampled group to the properties of the target population, the researcher was able to determine whether the sample presented a representative group of the target population or not.

6.3.2.2. The sentencing process

In this section, five composite frequency tables were calculated for subsets of questionnaire statements on the prevalence and sentencing of various crimes; justification for sentences passed; and the importance of certain aggravating and mitigating factors when passing judgement. Tables 6.9, 6.10, 6.11 and 6.12 reports on these aspects. The results of the Pearson's Chi-square tests associated with each table are reported in the last row of these tables. A Pearson's test compares respondents' rating response pattern on a particular issue (row of the table) to others' rating response patterns (other rows of the table) to determine whether respondents perceived all issues listed in a table in the same way or some were statistically significantly differently from others.

6.3.2.2.1 Views on the sentencing process

Respondents were asked how they view the status of the crime in their jurisdiction in the past five years. Because the judges' and the magistrates' job is a difficult task, respondents were asked about their safety in their areas of residence. In addition, respondents were asked to give their opinion as to how much they consider the public input during the sentencing of the offender. Table 6.8 presents the response frequency distributions on the status of recorded crime, safety of residential areas and how in touch judges are with public opinion.

Table 6.8 Views on the sentencing process									
	Safe area					Crime status			
	F _i	%	Cum F _i	Cum %		F _i	%	Cum F _i	Cum %
Very safe	3	9.68	3	9.68	Increased +	5	16.13	5	16.13
Fairly safe	22	70.97	25	80.65	Increased	21	67.74	26	83.87
A bit unsafe	6	19.35	31	100.00	Stayed the same	1	3.23	27	87.10
Judge in touch?					Decreased	3	9.68	30	96.77
Very in touch	2	6.45	2	6.45	Decreased++	1	3.23	31	100.00
Fairly in touch	22	70.97	24	77.42					
Bit out of touch	7	22.58	31	100.00					

Only 19.6% of the respondents felt a bit unsafe in their areas of residence; most of the respondents were generally of the opinion that their area was fairly safe (70.97%). Crime has increased over the past five years (67.74+13.13%). Table 6.8 further indicates that respondents were fairly to definitely in touch with public opinion as opposed to being out of touch.

6.3.2.2.2 Views on the escalation rates of certain crimes

The respondents were asked to provide their views on the escalation rates of certain crimes in their areas. The list included crime against the state and administration of justice; crimes against reputation; crimes against freedom of movement; crimes against property and damage; crimes against bodily integrity; crimes against the person and crimes against public administration. Respondents were asked whether the listed crimes in the past five years have become more common, stayed the same, less common or whether they are unsure. Table 6.9 shows respondents' opinions on the escalation rates of crime in the past five years.

Table 6.9					
Evaluation of changed crime status over the past five years on the issues listed					
Criminal areas	Rating responses				
Frequency Row Pct	more common	the same	less common	undecided	Total
state & admin.justice	8 25.81	20 64.52	2 6.45	1 3.23	31
reputation	2 6.45	18 58.06	11 35.48	0 0.00	31
freedom of movement	3 9.68	14 45.16	12 38.71	2 6.45	31
property and damage	27 87.10	3 9.68	1 3.23	0 0.00	31
bodily integrity	24 77.42	7 22.58	0 0.00	0 0.00	31
the person	21 67.74	5 16.13	5 16.13	0 0.00	31
public administration	8 25.81	13 41.94	7 22.58	3 9.68	31
Total	93	80	38	6	217
Fisher's Exact Probability (Chi-square = 107.28) <0.0001***					

The last row of the frequency table, the 'totals row', indicates that the overall totals for the 'more common' category (n=93) is markedly higher than the 'less common' category. In general, respondents perceived the listed crimes to have increased, especially the 'more common' category of 'property and damage', 'bodily integrity' and 'the person' reports perceptions on a considerable increase. 'Reputation' and 'freedom of movement' seem to have swayed towards less common.

6.3.2.2.3 Views on the sentencing of listed crimes

The respondents were asked to provide their views on the sentencing for listed crimes. As in the previous section, the crimes included crimes against the state and administration of justice; crimes against reputation; crimes against freedom of movement; crimes against property and damage; crimes against bodily integrity; crimes against one's person and crimes against public administration. Respondents were asked whether sentencing for the listed crimes on a scale which read: 1 are much too tough, 2 a little too tough, 3 appropriate, 4 a little too lenient or 5 much lenient. Table 6.10 shows respondents' opinions on the sentencing for listed crimes.

Table 6.10 Current sentencing of listed crimes						
Criminal areas	Rating current sentences for listed crimes					
Frequency Row Pct	Tough ++	Tough	Appropriate	Lenient	Lenient++	Total
state & admin.justice	0 0.00	4 12.90	19 61.29	7 22.58	1 3.23	31
reputation	1 3.23	0 0.00	19 61.29	9 29.03	2 6.45	31
freedom of movement	1 3.23	0 0.00	19 61.29	10 32.26	1 3.23	31
property and damage	2 6.45	4 12.90	12 38.71	11 35.48	2 6.45	31
bodily integrity	4 12.90	5 16.13	9 29.03	10 32.26	3 9.68	31
the person	3 9.68	4 12.90	13 41.94	8 25.81	3 9.68	31
public administration	1 3.23	3 9.68	15 48.39	9 29.03	3 9.68	31
Total	12	20	106	64	15	217
Fisher's Exact Probability (Chi-square = 25.22) <0.0001***						

The last row in Table 6.10, overall perception of respondents on all listed crimes, indicates that respondents perceived sentencing to be appropriate to somewhat lenient (48% and 30%). For all the crimes listed, except 'state and administration of justice', the proportion of respondents that regarded sentencing to be too lenient to some extent was 35% or greater – which indicates a definite perception trend of leniency.

6.3.2.2.4 Views on the objectives of sentencing

Judges and magistrates were asked to rank the objectives of sentencing. The respondents were asked to rank the seven common objectives of sentencing which included punishing the offender; separating the offender from society; expressing community disapproval; assisting the offender's rehabilitation; deterring others from committing similar crimes; deterring the offender from re-offending and compensating the victim(s) or the community. The respondents ranked them from 1 to 7 according to their view of the purpose of sentencing with 1 being the most important and 7 being the least important. Table 6.11 shows how the respondents ranked the objectives of sentencing.

Table 6.11 Objectives of sentencing									
Objectives	Ranking of objectives : rank 1-7								
Frequency Row Pct	1	2	3	4	5	6	7	Total	Rank
Punishing the offender	4 12.90	5 16.13	6 19.35	4 12.90	6 19.35	4 12.90	2 6.45	31	3
Separating offender from society	1 3.23	5 16.13	4 12.90	4 12.90	6 19.35	6 19.35	5 16.13	31	6
Expressing community disapproval	1 3.23	3 9.68	5 16.13	8 25.81	6 19.35	6 19.35	2 6.45	31	5
Assist offender rehabilitation	20 64.52	3 9.68	4 12.90	0 0.00	3 9.68	1 3.23	0 0.00	31	1
Deterring others from crime	2 6.45	11 35.48	3 9.68	5 16.13	5 16.13	3 9.68	2 6.45	31	2
Deterring offender, re-offending	3 9.68	4 12.90	6 19.35	6 19.35	1 3.23	11 35.48	0 0.00	31	4
Compensating victim(s)/community	0 0.00	0 0.00	3 9.68	4 12.90	4 12.90	0 0.00	20 64.52	31	7
Total	31	31	31	31	31	31	31	217	
Fisher's Exact Probability (Chi-square = 182.90) < 0.0001***									

The final ranking of objectives is displayed in the last column of Table 6.11. Rank 1 was considered to be the objective with the highest frequency in the rank 1st-column (2nd column of the table), rank 2 the objective selected from the remaining objectives with the highest cumulative frequency ranked '1' and '2' (columns 2 and 3); rank 3 the objective selected from the remaining objectives with the highest cumulative frequency ranked '1', '2' and '3' (columns 2, 3 and 4), etc. The ranking indicated that offender rehabilitation; deterring others from offending; punishment of the offender; offender crime deterrent; expressing community disapproval; separating the offender with the society and compensating the victim was regarded as most to least important objectives of sentencing

6.3.2.2.5 Views on aggravating factors affecting sentencing

In this section of the questionnaire, respondents were asked to indicate the extent to which they consider aggravating factors in their sentencing. The respondents were asked to indicate whether they consider the listed aggravating factors as very important; quite important; not that important and not important at all. The aggravating factors included, amongst others, whether the offence involved the use of actual or threatened violence; whether the offence involved the use of weapons; whether the offence was motivated by hatred; whether the offence was committed

without regard for public safety; whether the offender abused a position of trust or authority in relation to the victim and whether the offence(s) involved multiple victims or a series of criminal acts. Table 6.12 shows how the respondents consider aggravating factors in their sentencing.

Table 6.12				
Sentencing: opinion on aggravating circumstances				
Factors	Importance of aggravating factors			
Frequency Row Pct	Important++	quite important	Not that important	Total
use actual/threatened violence	9 29.03	21 67.74	1 3.23	31
use of weapons	19 61.29	12 38.71	0 0.00	31
more than needed violence	12 38.71	18 58.06	1 3.23	31
hatred driven offence	15 48.39	13 41.94	3 9.68	31
execution no regard for the public	10 32.26	18 58.06	3 9.68	31
very old, young/ disabled victim	16 51.61	15 48.39	0 0.00	31
Abuse trust/authority over victim	11 35.48	19 61.29	1 3.23	31
Offence against victim's occupation	24 77.42	7 22.58	0 0.00	31
multiple victims/series of criminal acts	22 70.97	8 25.81	1 3.23	31
group of offenders	16 51.61	14 45.16	1 3.23	31
substantial injury/harm /loss	12 38.71	18 58.06	1 3.23	31
organized criminal activity	22 70.97	9 29.03	0 0.00	31
offender with prior convictions	18 58.06	13 41.94	0 0.00	31
parolee/suspended sentence/bail	20 64.52	11 35.48	0 0.00	31
Total	226	196	12	434
Fisher's Exact Probability (Chi-square=52.78) = 0.0014***				

Up to 61.29% of the respondents are of the opinion that the use of weapons is a very important aggravating factor when determining the sentence. 77.42% are of the opinion that an offence that is directed towards the victim's occupation is a very important aggravating factor. Judges and Magistrates also consider offences which involve multiple victims or a series of crimes as a very

important aggravating factor (70.97%). Organised criminal activity and violation of parole, suspended sentence or bail are also very important aggravating factors, with both respectively constituting 70.97% and 64.52% of the respondents' opinions. Respondents are of the opinion that they regard the following aggravating factors as quite important in their sentencing, namely

- Actual or threatened violence
- Excessive violence
- Execution of crime with no regard to public
- Very old & very young victims
- Abuse of position of authority
- Substantial injury
- Group of offenders
- Hatred driven offences

From the above, it can be deduced that aggravating factors play an important role in determining the sentence. This can be confirmed from a total of 226 for 'very important' and 196 for 'quite important' as opposed to 12 for 'not that important at all'.

6.3.2.2.6 Views on mitigating factors affecting sentencing

In this section of the questionnaire, respondents were asked to indicate the extent to which they consider mitigating factors in their sentencing. Like with the aggravating factors, the respondents were asked to indicate whether they consider the listed mitigating factors as very important; quite important; not that important and not important at all. The mitigating factors included, amongst others, whether the injury or loss to the victim was not substantial; whether the offence was not part of a planned or organized criminal activity; whether the offender does not have any record (or any significant) of prior convictions; whether the offender has good prospects of rehabilitation either because of age or otherwise; whether the offender has shown remorse for the offence by making reparation for any injury, loss or damage or any other manner and whether the offender was young (under 18) or old (over 65). Table 6.13 shows how the respondents consider mitigating factors in their sentencing.

Table 6.13 Sentencing: opinion on mitigating circumstances				
item(Agreement rating)	mitigate(Mitigating factors)			
Frequency Row Pct	Important++	quite important	Not that important	Total
injury/loss not substantial	4 12.90	24 77.42	3 9.68	31
offence, not part, planned activity	6 20.00	20 66.67	4 13.33	30
offender provoked by victim	4 13.33	25 83.33	1 3.33	30
Offender, no prior convictions	16 51.61	12 38.71	3 9.68	31
offender, person of good character	4 12.90	8 25.81	19 61.29	31
offender, young(18)/old(65)	8 25.81	22 70.97	1 3.23	31
offender unlikely to re-offend	9 29.03	18 58.06	4 12.90	31
offender, good rehab prospects	9 29.03	22 70.97	0 0.00	31
offender, shows remorse, reparation	15 48.39	16 51.61	0 0.00	31
offender, unaware, consequences act	9 29.03	22 70.97	0 0.00	31
offender assisted law enforcement	2 6.45	24 77.42	5 16.13	31
Total	86	213	40	339
Frequency Missing = 2 Fisher's Exact Probability (Chi-square=121.03) < 0.0001***				

However the fact that the offender is a person of good character is not considered a mitigating factor (61.29). The results further indicate that the following factors are regarded as very important mitigating factors, i.e. no prior convictions (51.61%) and an offender that shows remorse (48.39%). The results further indicate that the following factors are regarded as quite important mitigating factors,

- If injury or loss in not substantial
- Not a planned activity
- An offender that was provoked by the victim
- An offender that is unlikely to re-offend
- A young offender
- Good rehabilitation prospect for the offender
- An offender that shows remorse

- An offender that was unaware of the consequences of his actions
- An offender that assists law enforcement.

6.3.2.3. Views on the continuous use of imprisonment as sentencing choice

Respondents' opinions on the continuous use of imprisonment were queried in Section C of the questionnaire. Table 6.14 presents the response patterns on various issues related to the continued use of imprisonment as a sentencing option. The response pattern of the respondents to each issue is indicated in rows according to an agreement rating level frequency.

Table 6.14						
Opinion on continuous use of imprisonment						
Aspects	Agreement rating					
Frequency Row Pct	agree++	agree	undecided	disagree	disagree++	Total
Reform is a legitimate penal pursuit	9 29.03	19 61.29	1 3.23	1 3.23	1 3.23	31
Rehabilitation as a penal objective is obsolete	0 0.00	6 19.35	3 9.68	11 35.48	11 35.48	31
Determinate sentences are conducive reform	0 0.00	7 22.58	16 51.61	7 22.58	1 3.23	31
It is difficult to determine offender's suitability for reform	0 0.00	14 46.67	8 26.67	5 16.67	3 10.00	30
Recidivism can be used as a measure of the effectiveness of the penal system	1 3.23	9 29.03	11 35.48	9 29.03	1 3.23	31
Imprisonment's primary objective is to punish	4 12.90	13 41.94	1 3.23	9 29.03	4 12.90	31
Imprisonment contributes a lot to crime prevention	11 35.48	6 19.35	5 16.13	7 22.58	2 6.45	31
Imprisonment has higher costs than other options	14 45.16	7 22.58	5 16.13	5 16.13	0 0.00	31
Any criminal offence requires imprisonment	0 0.00	1 3.23	0 0.00	6 19.35	24 77.42	31
Offender reform is possible without imprisonment	14 45.16	14 45.16	1 3.23	2 6.45	0 0.00	31
Imprisonment produces hardened criminals	4 12.90	5 16.13	11 35.48	6 19.35	5 16.13	31
Total	57	101	62	68	52	340
Frequency Missing = 1						
Fisher's Exact Probability (Chi-square=263.48) <0.001***						

The chi-square value of 263.48 is highly significant (significance on the 0.1% level) which implies that respondents did not evaluate all issues on continued imprisonment in the same way.

Respondents indicated statistically significantly greater agreement on issues of reform as legitimate penal objective; determination of an offender's suitability to reform; primary objective of imprisonment is punishment; imprisonment prevents or contributes to crime prevention; high cost of imprisonment compared to other alternatives and that reform can be brought about without imprisonment.

However, respondents seem to disagree with the fact that rehabilitation as a penal objective has outlived its usefulness and that any criminal offence requires imprisonment. Furthermore, respondents indicated that they felt uncertain about determinate sentences being more conducive to reform; recidivism as a measure of penal effectiveness and the fact that imprisonment produces hardened criminals.

6.3.2.4. Views on the objectives of sentencing and crime prevention

Section D of the questionnaire is divided into four sub-sections. While the last three parts of the section are aimed at determining the deterrent, rehabilitative as well as the retributive effect of punishment, the first part of section D consists of 28 close ended questions aimed at determining the respondents' views on the objectives of sentencing and crime prevention. The questions included, amongst others, whether punishment should be unpleasant to the person undergoing it; whether the fear of punishment serves to intimidate or deter most people from committing crime; whether retribution strives towards crime prevention rather than the rehabilitation of the offender; whether general deterrence contributes more to crime prevention than individual deterrence; whether judges favoring more punitive objectives base their judgments on the offence and criminal record; whether punishment should fit the offender's personality rather than the crime itself. The respondents were asked to indicate the extent to which they agree or disagree with the given statements. Perceptions on the objectives of sentencing and crime prevention, and the underlying structure of the response data are reflected in Table 6.15.

Table 6.15 Objectives of sentencing and crime prevention						
Issues	Agreement rating					
Frequency Row Pct	agree++	agree	undecided	disagree	disagree++	Total
Punishment should be unpleasant	12 38.71	14 45.16	0 0.00	3 9.68	2 6.45	31
Punishment conveys society's values	3 9.68	26 83.87	0 0.00	1 3.23	1 3.23	31
Punishment offender, accountable & culpable	3 9.68	22 70.97	1 3.23	5 16.13	0 0.00	31
Fear of punishment deters transgressing	2 6.45	23 74.19	3 9.68	3 9.68	0 0.00	31
Punishment should fit personality and not the offence	1 3.23	14 45.16	4 12.90	12 38.71	0 0.00	31
High recidivism shows that punishment is not deterrent	1 3.23	6 19.35	13 41.94	7 22.58	4 12.90	31
Sentencing shows offender's blameworthiness	0 0.00	18 58.06	8 25.81	5 16.13	0 0.00	31
Sentencing is Judges crime control strategy	5 16.13	19 61.29	4 12.90	2 6.45	1 3.23	31
Goals preferences by judges are related to sentencing	1 3.23	16 51.61	12 38.71	2 6.45	0 0.00	31
Punitive obj: Judge, focus, crim.record	1 3.23	13 41.94	13 41.94	4 12.90	0 0.00	31
Punitive obj: Judge, focus, culpability	0 0.00	14 45.16	12 38.71	5 16.13	0 0.00	31
Retribtn: ignore right of offender	3 9.68	12 38.71	5 16.13	9 29.03	2 6.45	31
Retribtn: community concern, victim	4 12.90	19 61.29	2 6.45	5 16.13	1 3.23	31
Retribtn: proper goal of sentencing	3 9.68	12 38.71	8 25.81	8 25.81	0 0.00	31
Retribtn: prominent obj, sentencing	5 16.13	8 25.81	14 45.16	3 9.68	1 3.23	31
Retribtn:shows desire,justified pain	3 9.68	22 70.97	2 6.45	4 12.90	0 0.00	31
Retribtn: conveys society condemnation	3 9.68	23 74.19	3 9.68	2 6.45	0 0.00	31
Retribtn: victim equality offender	3 9.68	13 41.94	10 32.26	5 16.13	0 0.00	31
Retribtn: victim right to retribute	5 16.13	9 29.03	6 19.35	8 25.81	3 9.68	31
Retribtn: prevent, not rehab objctve	1 3.23	11 35.48	13 41.94	2 6.45	4 12.90	31
Deterrebce: prevent, not rehab objctve	1 3.23	14 45.16	12 38.71	2 6.45	2 6.45	31
Sentence,goal deter recognz,counts	1 3.23	26 83.87	4 12.90	0 0.00	0 0.00	31
Genrl & indiv deterrence: effectiveness	0 0.00	13 41.94	15 48.39	2 6.45	1 3.23	31

Table 6.15 Objectives of sentencing and crime prevention						
Issues	Agreement rating					
Frequency Row Pct	agree++	agree	undecided	disagree	disagree++	Total
Society:disappointment:sntnce,lenient	12 38.71	16 51.61	1 3.23	1 3.23	1 3.23	31
Publicity:deterrent&retribe measures	12 38.71	15 48.39	2 6.45	2 6.45	0 0.00	31
Judges:reform obj in sentencing	2 6.45	19 61.29	5 16.13	5 16.13	0 0.00	31
Judges:weight,punish,not disposition	1 3.23	8 25.81	8 25.81	12 38.71	2 6.45	31
Incarceration & fines more than probation	17 54.84	12 38.71	1 3.23	1 3.23	0 0.00	31
Total	105	437	181	120	25	868
Fisher's Exact Probability (chi-square=392.61) < 0.0001***						

The probability associated with the Chi-square value of 392.61 in Table 6.15 indicates that response patterns on issues related to the continuous use of imprisonment differ statistically significantly. The totals-row in Table 6.15 indicates a general positive agreement trend under respondents on continued use of imprisonment. Issues which respondents perceived very positively, this being statistically significantly more so than other issues, are highlighted. Issues that were viewed less positively are also highlighted.

The interpretation of the results of Table 6.15 did not appear straight forward and enlightening. Therefore, the idea of an underlying structure of the response data was considered to support the reasoning that different dimensions of continued use of imprisonment were addressed by the set of questionnaire statements and that segmentation of the set of statements into a number of subsets could ease the interpretation of the results and provide a deeper insight into respondent perceptions on continued use of imprisonment. This will be covered in section 6.3.2.6 below.

6.3.2.5. Views on the deterrent, rehabilitative and retributive effect of punishment

Towards the end of Section D of the questionnaire, respondents were asked to indicate the extent in which punishment for the listed crimes has a deterrent, rehabilitative and retributive effect. The crimes included crime against the state and administration of justice; crimes against reputation; crimes against freedom of movement; crimes against property and damage; crimes

against bodily integrity; crimes against the person and crimes against public administration. In determining the deterring effect, the respondents were asked whether the effect of punishment has no deterrent effect whatsoever; whether the deterring effect is dubious; whether there is a slight deterring effect; whether there is a reasonably deterring effect or whether there is a totally deterring effect. The same procedure was followed in determining the rehabilitative and the retributive effect of punishment.

Tables 6.16 - 6.18 reflects the rating response patterns of the sample to the deterring, rehabilitative and retributive effect of punishment on a number of listed crimes. The exact probabilities associated with the three tables indicate that the extent-of-effect response pattern on the deterring effect of punishment for listed crimes, Table 6.16, differ statistically significantly for some of the crimes. Statistical significance (and statistical significantly different rating response patterns) could not be established for the rehabilitative and retributive effect of the listed crimes.

Table 6.16						
The deterring effect of punishment on listed crimes						
Crimes	Effectiveness rating responses					
Frequency Row Pct	no effect	dubious	slight effect	reasonable effect	great effect	Total
State & administration of justice	0 0.00	4 12.90	17 54.84	9 29.03	1 3.23	31
reputation	1 3.23	8 25.81	11 35.48	9 29.03	2 6.45	31
freedom of movement	1 3.23	5 16.13	13 41.94	9 29.03	3 9.68	31
property and damage	1 3.23	14 45.16	7 22.58	6 19.35	3 9.68	31
bodily integrity	1 3.23	11 35.48	10 32.26	6 19.35	3 9.68	31
the person	0 0.00	12 38.71	8 25.81	8 25.81	3 9.68	31
public administration	0 0.00	4 12.90	15 48.39	10 32.26	2 6.45	31
Total	4	58	81	57	17	217
Fisher's Exact Probability (Chi-square = 25.48) <0.0001***						

The row totals in the totals-row indicate that, in general, respondents were of the opinion that punishment had at least a slight crime deterring effect. There was statistically significantly

stronger support on the issue/s of crimes against public administration; state and administration of justice and crimes against freedom of movement than crimes against property and damage; bodily integrity and reputation.

Table 6.17						
The rehabilitative effect of punishment on crime						
Crimes	Rating responses					
Frequency Row Pct	no effect	dubious	slight effect	reasonable effect	great effect	Total
state & administration of justice	3 9.68	6 19.35	8 25.81	12 38.71	2 6.45	31
reputation	1 3.23	8 25.81	12 38.71	9 29.03	1 3.23	31
freedom of movement	0 0.00	6 19.35	14 45.16	9 29.03	2 6.45	31
property and damage	0 0.00	13 41.94	6 19.35	10 32.26	2 6.45	31
bodily integrity	0 0.00	12 38.71	10 32.26	7 22.58	2 6.45	31
the person	0 0.00	13 41.94	7 22.58	10 32.26	1 3.23	31
public administration	0 0.00	7 22.58	12 38.71	11 35.48	1 3.23	31
Total	4	65	69	68	11	217
Fishers Exact Probability(Chi square = 28.37) = 0.24						

The totals-row indicates that opinion varied between a dubious to reasonable rehabilitative effect of punishment on the listed crimes. The general deduction should therefore be made that respondents were undecided as to whether punishment had a rehabilitative effect on the listed crimes.

Table 6.18						
Retributive effect of punishment on crime						
Crimes	Rating responses					
Frequency Row Pct	no effect	dubious	slight effect	reasonable effect	great effect	Total
state & administration of justice	4 12.90	8 25.81	13 41.94	5 16.13	1 3.23	31
reputation	1 3.23	8 25.81	15 48.39	5 16.13	2 6.45	31
freedom of movement	2 6.45	5 16.13	15 48.39	6 19.35	3 9.68	31
property and damage	0 0.00	10 32.26	11 35.48	6 19.35	4 12.90	31
bodily integrity	1 3.23	14 45.16	6 19.35	8 25.81	2 6.45	31
the person	0 0.00	12 38.71	12 38.71	4 12.90	3 9.68	31
public administration	2 6.45	10 32.26	14 45.16	3 9.68	2 6.45	31
Total	10	67	86	37	17	217
Fishers Exact Probability(Chi-square =23.71) = 0.48						

The totals-row indicates a general, more negative opinion regarding the retributive effect of punishment on the listed crimes: a tendency towards a dubious to slight effect. The trend was also reported for each individual crime. The general deduction can therefore be made that respondents were rather negative towards the retributive effect of punishment on listed crimes – slightly more so than what concerns the rehabilitative effect of punishment.

6.3.2.6 Preliminary exploratory factor analysis

Although the number of respondents was very limited (N=31) the data structure of the items on the continued use of imprisonment was investigated for underlying perception-dimensions (or factors) to simplify and address the research question on perceptions more directly and specifically (For example; how do respondents perceive the aspects of imprisonment, (subsets of questionnaire items) such as, ‘punishment complying to a societal value system of crime prevention’; and/or, ‘the effect of punishment (imprisonment) on the offender’; and/or ‘the authority for or support to the victim’; and/or, ‘principles guiding sentencing/ judgement decisions’? etc.)

Although the number of observations was less than normally required for a reliable exploratory factor analysis, a principal axis factor analysis, with orthogonal (varimax) transformation was conducted to obtain an indication of underlying structure. Results pointed to an underlying four-factor structure on the perception data and are reported in Table 6.15 (The scree plot of the analysis indicated at least four factors and five eigen values were greater than one – 6.67, 3.17, 2.51, 2.00, 1.29, furthermore the proportion of variance accounted for by the first four factors accumulated to 0.86). The rotated and ordered factor pattern is presented in Table 6.19 below.

Table 6.19 Rotated Factor Pattern of Principal axis factor analysis with orthogonal (varimax) transformation)									
		Factor1		Factor2		Factor3		Factor4	
Q53	Q53	83	*	27		-23		-11	
Q49	Q49	78	*	-14		17		-17	
Q27	Q27	74	*	2		7		10	
Q52	Q52	64	*	41	*	22		2	
Q37	Q37	64	*	10		14		22	
Q33	Q33	64	*	23		-7		22	
Q44	Q44	61	*	33		48	*	-37	
Q34	Q34	58	*	5		-15		45	*
Q45	Q45	58	*	-24		55	*	6	
Q41	Q41	52	*	38		-7		-49	*
Q39	Q39	-15		71	*	3		-13	
Q43	Q43	18		64	*	33		-28	
Q38	Q38	27		57	*	28		11	
Q51	Q51	9		55	*	10		-8	
Q30	Q30	36		49	*	10		-2	
Q50	Q50	38		46	*	-23		18	
Q28	Q28	-18		16		72	*	8	
Q26	Q26	22		20		66	*	18	
Q32	Q32	23		27		61	*	0	
Q46	Q46	38		-48	*	51	*	-2	
Q40	Q40	27		23		40	*	-33	
Q47	Q47	-8		-5		19		11	
Q35	Q35	28		14		15		85	*
Q36	Q36	21		18		1		60	*
Q48	Q48	-12		-15		12		36	
Q31	Q31	3		-14		0		26	
Q29	Q29	-13		0		32		-32	
Q42	Q42	17		46	*	-23		-54	*
Printed values are multiplied by 100 and rounded to the nearest integer. Values greater than 0.4 are flagged by an '*'.									

As indicated in Table 6.19 (items flagged with an ‘*’), questionnaire items were grouped into four subsets. By studying the statements within each subset, the four factors or constructs were labelled according to the concept described by the items. Descriptive labels were assigned or defined for the constructs as follows:

1. Society: Effect of value system of society on imprisonment/punishment towards crime prevention
2. Victim: Motivation for just punishment (retribution)
3. Offender: Effect of punishment on offender
4. Judge: Judging principles

The determination of the internal consistency reliability of these four constructs was investigated in the next step of the analysis to verify the internal consistency reliability of the four constructs.

6.3.2.7 Scale reliability testing and Cronbach alpha coefficients: Validating the internal consistency reliability of the four perception-constructs on continued use of imprisonment

This type of reliability tests whether the subset of questionnaire items that describes a perception-dimension or construct all contribute towards explaining the factor or construct and whether a perception measure – derived from the responses of respondents on this subset of questionnaire items reliably measures perceptions.

Separate scale reliability tests were conducted on the rating responses of each subset of questionnaire items (describing the four constructs of *society*, *victim*, *offender* and *judge* defined in the preceding section). Table 6.20 reports on the results of these analyses. Each row in the table presents the results of a separate test. The first column lists the particular construct evaluated; the second column the subset of questionnaire items describing the specific factor; the third column questionnaire items marked for removal from the construct (indicated in the analysis) and indicated as not contributing towards explaining the constructs; the fourth column the indicator of internal consistency reliability, namely the Cronbach alpha coefficient, and, as

discussed in the next section, mean scores for each construct and the standard deviation in columns five and seven. Of interest to the researcher is the mean scores that describe the general perception of respondent on the concept of imprisonment, which is under investigation.

<p>Table 6.20</p> <p>Scale reliability testing.</p> <p>Summary results of scale reliability testing conducted on perceptions on the four dimensions of imprisonment. Cronbach alpha coefficients, questionnaire items describing each perception construct, construct mean scores and standard deviations are reported in the body of the table</p>						
Perception dimension/ construct	Questionnaire items		Cronbach alpha	Mean score	N	Standard dev.
	included	omitted				
Society values, & crime prevention	q27,33, 37, 41, 44-45, 49, 52-53		0.89	2.40	31	0.69
The victim & retribution	q30, 38-39, 43, 50-51		0.78	2.45	31	0.64
Punishment effect on offender	q26, 28, 32, 40, 46		0.71	2.42	31	0.65
Judgement principles/systems	q34-36		0.80	2.61	31	0.63
A Cronbach alpha coefficient in the region of, or greater than 0.7 is indicative of internal consistency reliability for the subset of questionnaire items that describe a particular construct/dimension						

The values of the Cronbach alpha coefficients reported in Table 6.20 are greater than 0.7 which validate internal consistency reliability for the four imprisonment constructs. Measures of perceptions on the aspects of imprisonment - calculated as mean rating values for each subset of questionnaire items - can therefore be regarded as reliable measures of perception. (This is a pre-requisite that has to be satisfied before calculated scores can be used to represent measures of perception).

6.3.2.8 Calculation of the four sets of imprisonment perception scores

As indicated in the analysis strategy section (section 6.3), respondents' perception scores for each construct were calculated once internal consistency reliability of the construct had been established (section 6.3.2.7). The scores measure respondents' perceptions on the four aspects of imprisonment and are calculated as the mean rating responses of a respondent on the subset of

questionnaire statements that describe the specific aspect of imprisonment. Since the scores are derived from agreement rating responses, the scores can be interpreted on the same agreement rating scale used in the questionnaire with a rating of ‘1’ indicating *strong agreement*, ‘2’ indicating *agreement*, up to ‘5’ indicating *strong disagreement*.

The mean construct score for each imprisonment aspect is calculated as the grand mean of individual scores and reflects how respondents in general perceive an aspect of imprisonment. These construct score means and their standard deviations are reported in the last column of Table 6.20.

Table 6.20 indicates that the construct mean scores for the *society’s values contribution*, *punishment and the victim* and the *effect of punishment on the offender* were 2.40, 2.45 and 2.42 – which reflects *general agreement* by respondents on these issues of imprisonment. The construct of *principles that guide judges in their judgement* approximated ‘3’, which indicates that respondents felt *unsure or indecisive* on this aspect.

The nature of respondents’ perceptions of the four aspects of imprisonment was further investigated in two-way frequency tables and bar graphs and evaluated the effect that biographical attributes had on perceptions. This is discussed in section 6.3.2.9 [below](#).

6.3.2.9 Two-way frequency tables to determine the effect of biographical attributes on perceptions regarding the four aspects of imprisonment

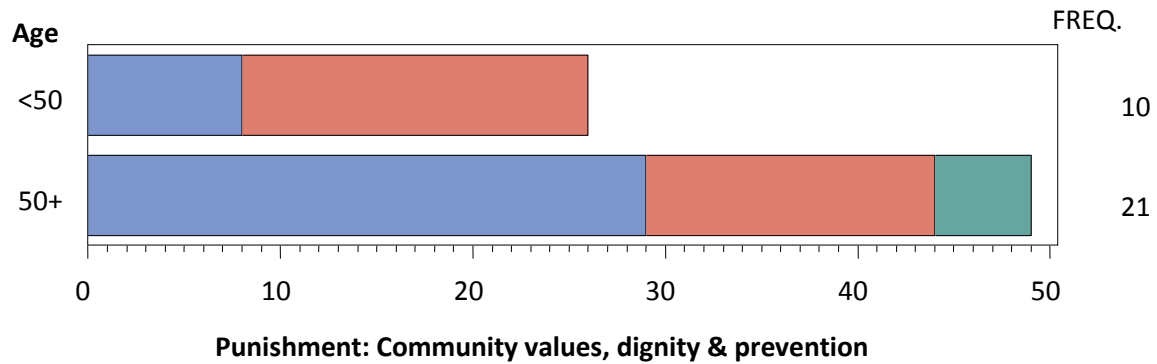
Table 6.21 summarises a number of two-way tables of pair-wise attribute-by-imprisonment construct comparisons. The exact probability of the Chi-square statistic associated with each table and the probability associated with the Cochran-Armitage trend test are reported in the last row of each table. The Chi-square test indicates statistical dependence between the specific attribute and perception construct; and the trend test identifies statistically significant perception trends over the categories of the attribute under investigation.

Table 6.21							
Cross reference frequency tables: Comparison of effect of biographical attributes on imprisonment perception scores							
Dependence between attribute and construct indicated by Chi-square tests and Cochran Armitage trend tests							
Society by no of cases handled per day				Victim by age			
Rating	1 - 7	> 7	Total		<50	50+	Total
agreement	10 (55.56)	8 (44.44)	18	agreement	5 (29.41)	12 (70.59)	17
undecided	6 (54.55)	5 (45.45)	11	undecided	3 (30.00)	7 (70.00)	10
Total	16	13	29	Total	8	19	27
Fisher's Exact Probability (Chi-square= 0.003) = .99 Cochran-Armitage trend test: probability (Z= -0.052) = 0.96				Fisher's Exact Probability (Chi-square= 0.001) = 0.97 Cochran-Armitage trend test: probability (Z= 0.03) = 0.48			
Society by age				Offender by age			
Rating	<50	50+	Total		<50	50+	Total
agreement	4 (22.22)	14 (77.78)	18	agreement	5 (25.00)	15 (75.00)	20
undecided	6 (54.55)	5 (45.45)	11	undecided	3 (37.50)	5 (62.50)	8
				disagreement	2 (66.67)	1 (33.33)	3
Total	10	19	29	Total	10	21	31
Fisher's Exact Probability (Chi-square=3.16) 0.08 # Cochran-Armitage trend test: probability (Z=1.78)= 0.03*				Fisher's Exact Probability (Chi-square= 2.21) =0.33 Cochran-Armitage trend test: probability (Z=1.44) = 0.07 #			
Victim by experience				Offender by no of cases per day			
Rating	1-11 yrs	12-16+ yrs	Total		1 – 7	> 7	Total
agreement	8 (47.06)	9 (52.94)	17	agreement	12 (60.00)	8 (40.00)	20
undecided	2 (20.00)	8 (80.00)	10	undecided	6 (75.00)	2 (25.00)	8
				disagreement	0 (0.00)	3 (100.00)	3
Total	10	17	27	Total	18	13	31
Fisher's Exact Probability (Chi-square= 1.98) = 0.16 Cochran-Armitage trend test: probability (Z=-1.41) = 0.08 #				Fisher's Exact Probability (Chi-square= 5.13) = 0.07 # Cochran-Armitage trend test: probability (Z= -1.17) 0.12			
Victim by race				Offender by gender			
Rating	Black	Other	Total		Female	Male	Total
agreement	11 (64.71)	6 (35.29)	17	agreement	17 (85.00)	3 (15.00)	20
undecided	7 (70.00)	3 (30.00)	10	undecided	7 (87.50)	1 (12.50)	8
				disagreement	1 (33.33)	2 (66.67)	3
Total	18	9	27	Total	25	6	31
Fisher's Exact Probability (Chi-square= 0.08) = 0.78 Cochran-Armitage trend test: probability (Z= 0.28) = 0.38				Fisher's Exact Probability (Chi-square=4.79) = 0.09 # Cochran-Armitage trend test: probability (Z= -1.57) = 0.06 #			
Judge by gender				Judge by no of cases per day			
Rating	Female	Male	Total	rating	1 – 7	> 7	Total
agreement	11 (78.57)	3 (21.43)	14	agreement	11 (78.57)	3 (21.43)	14
undecided	12 (80.00)	3 (20.00)	15	undecided	6 (40.00)	9 (60.00)	15
disagreement	2 (100.00)	0 (0.00)	2	disagreement	1 (50.00)	1 (50.00_	2
Total	25	6	31	Total	18	13	31
Fisher's Exact Probability (Chi-square=0.52) = 0.77 Cochran-Armitage trend test: probability (Z=0.41) = 0.34				Fisher's Exact Probability (Chi-square=4.48) = 0.10 # Cochran-Armitage trend test: probability (Z=-1.99) = 0.02*			
Judge by experience				Significance legend #: Significant on 10% level of significance *: Significant on 5% level of significance **: Significant on 1% level of significance ***: Significant on 0.1% level of significance			
Rating	experience						
Frequency Row Pct	1-11 yrs	12-16+ yrs	Total				
agreement	5 (35.71)	9 (64.29)	14				
undecided	6 (40.00)	9 (60.00)	15				
disagreement	0 (0.00)	2 (100.00)	2				
Total	11	20	31				
Fisher's Exact Probability (Chi-square=1.23) = 0.54 Cochran-Armitage trend test: probability (Z= -0.27) = 0.39							

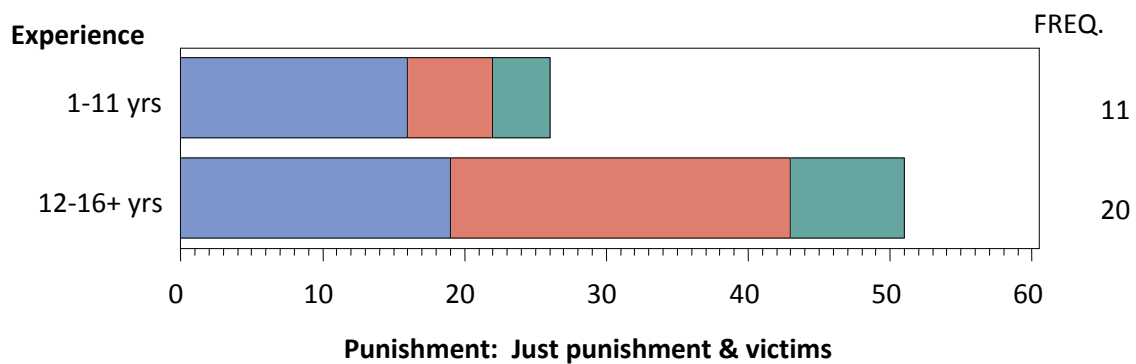
The results of Table 6.21 show that statistical significance was indicated for the following comparisons, namely, (please note that interpretation of results are based on the assumption that there is agreement on the labeling of the factors in the factor analysis section, section 6.3.2.6)

- The **effect of age** on perceptions regarding the contribution **of society's system on punishment** : Younger respondents were proportionately more undecided on this issue than older respondents
- The **effect of age** on perceptions on the effect of punishment on **the offender**: Proportionately more older people were in agreement that imprisonment had a significant effect on the offender
- The effect of the **respondent's experience** on perceptions related to the **victim's dignity or rights and punishment**: Proportionately, the more experienced respondents were more indecisive on whether the victim 'gained' from imprisonment or punishment
- The effect of **gender** on perceptions of the **effect of punishment on the offender**: Proportionately, females were in greater agreement on the effect of punishment or imprisonment on the offender
- The effect of **the number of cases** handled per day on perceptions of the **principles that guide sentences passed**
- The effect of **the number of cases** handled per day on perceptions of the **effect of punishment on the offender**

The nature of these significant effects is illustrated in the bar graphs attached in the next section.

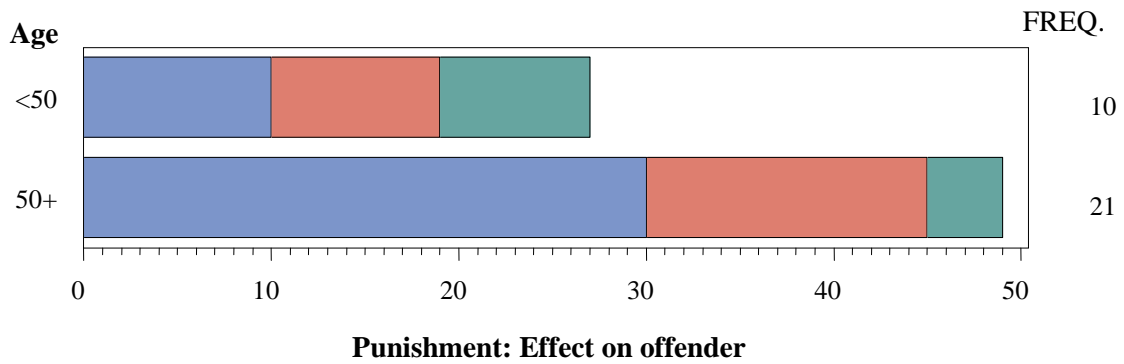


agreement
undecided
disagreement



Punishment: Just punishment & victims

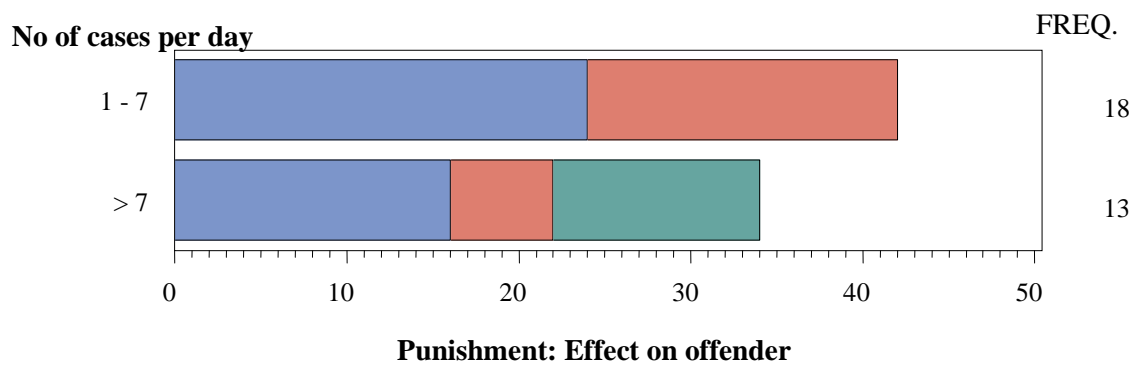
agreement
undecided
disagreement



Punishment: Effect on offender

agreement undecided

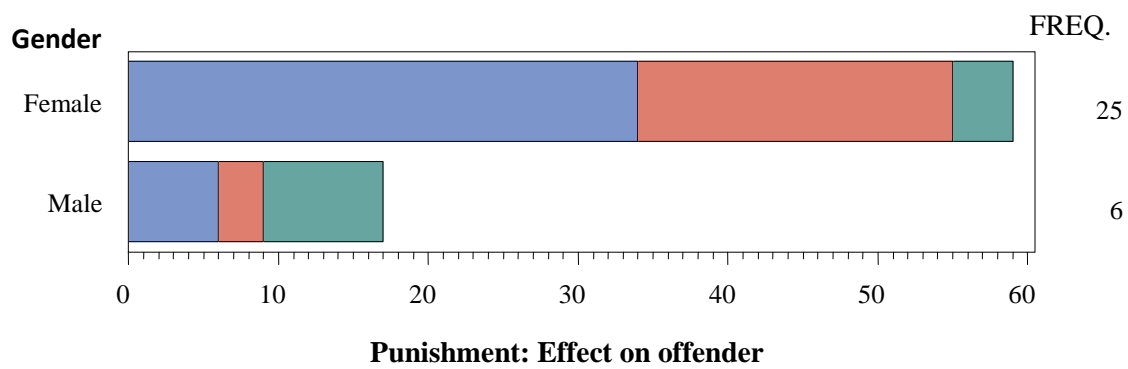
disagreement



Punishment: Effect on offender

agreement undecided

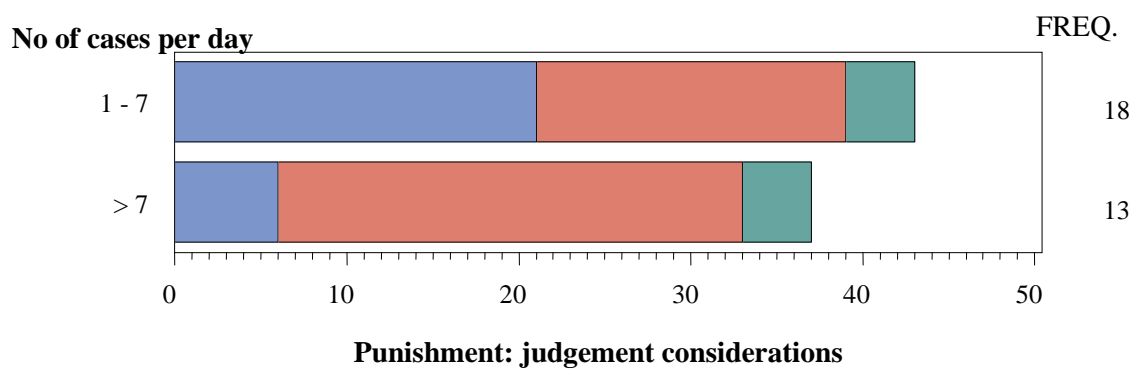
disagreement



Punishment: Effect on offender

agreement undecided

disagreement



Punishment: judgement considerations

agreement undecided

disagreement

6.4 SUMMARY

This chapter presented the empirical findings of the study with specific reference to the Thohoyandou High Court, Sibasa Regional Court and all the eight sub-offices of the Thohoyandou Regional Office. From the background information provided on the performance rating scores for magistrates' sub-regions based on the statistics of regional offices it was uncovered that those Judges and Magistrates whose performance is satisfactory tend to be more reserved on their stance that culpability, type of offence, criminal record and sentence preference should guide their verdict whereas poor performers are more in agreement with this stance. Their perceptions on punishment are influenced by their level of proven performance.

Section 6.3.2 provided an analysis of the results and their interpretations. The questionnaire was aimed at obtaining information such as their biographical background, respondents' views with regard to the sentencing process, respondents' views with regard to the continuous use of imprisonment as punishment and their views with regard to the objectives of sentencing, continued imprisonment and crime prevention.

CHAPTER 7

FINAL CONCLUSIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

The aim of this chapter is to provide the comprehensive findings of the research project. After the discussion of the major findings of the research project, relevant conclusions will be highlighted. The extent to which the hypotheses of the research were achieved will also be indicated. Recommendations based on the findings will be made.

7.2 FINAL CONCLUSIONS

The final conclusions on the analysed results are structured around the research questions and hypotheses. All analysis deductions are briefly summarized according to the structure presented in the previous chapter. In this way one will be able to conclude that all stated research questions have been addressed. The research questions and hypotheses can again be recapped and deductions incorporated.

7.2.1 The escalation of crime rates and court leniency

Sacco and Kennedy (1994: 175) state that crime rates provide an important standard through which one can be able to compare the relative extent of crime across jurisdictions and across groups. Official crime rates are of great social and political importance and they can be a powerful weapon not only to law enforcers but also to politicians, pressure groups and the mass media (Bottomley & Coleman, 1981: 1). In this context, crime rates are offered as a way of measuring the exposure that individuals have to crime or risk.

The empirical results indicate that there has been an increase in the crime level over the past five years. From Table 6.9 it is indicated that there seems to be a rise in crimes that are more violent than non-violent crimes. It is indicated that crimes against body integrity and crimes against the person have become more common in the area as opposed to crimes against reputation and

crimes against freedom of movement, amongst others. When combined, crimes against bodily integrity and crimes against the person make up the biggest total which should be a worrying factor because, according to Worall (2006: 3), they are what captures the individual's attention and inspires the greatest fear in the minds of the most citizens. Violent crimes involve a degree of physical pain inflicted on one or more human beings. There are many negative impacts of violent crimes (see section 1.2).

However, not all crime categories have shown an increase over the past five years within this jurisdiction. While crimes against the state and administration of justice and crimes against reputation have stayed the same over the past five years, crimes against freedom of movement seem to have swayed. Crimes against the state and the administration of justice may include crimes which, according Worall (2006: 3), offend the social order; examples of these are terrorism, public violence, reckless driving and escaping from custody, amongst others.

With regard to the escalation rate of crime within this jurisdiction, one should also consider the number of years that the respondents have been serving in order to conclude that the information provided is appropriate. From Table 6.7 it is indicated that most of the respondents have been working as judicial officers for over eight years. This in turn makes the respondents more experienced and their understanding of the crime rates within five years cannot be doubted.

7.2.2 Relationship between the seriousness of crime and sentencing

“The sentencing of those found guilty by the courts, whether as a result of a guilty plea or following trial and conviction by magistrates or a jury represents the culmination of a process that may have begun many weeks or months previously and for those who are sentenced to anything other than a discharge, a binding over or a suspended sentence, marks the beginning of another stage in facing the consequences of their offending” (Bottomley & Pease, 1986: 82). According to Powell (2003: 1), the appropriateness of the sentence depends on a number of factors. The court may consider whether the defendant has an explanation that makes the offence less serious than it would normally be or whether there are some aspects of the offender's

personal circumstances which shed a different light on the gravity of the offence or how it should be dealt with.

The study indicates that sentencing within this jurisdiction tends to be appropriate to somewhat lenient. Most of the respondents seem to believe that sentences for crimes against the state and administration of justice, reputation and the freedom of movement including crimes against public administration are appropriate. Punishment for crimes against body integrity which includes rape which has become more common in the past five years, within this jurisdiction, remains lenient. For this, Glaser (1997: 187) notes that “more violent and exploitive sex crimes require more severe penalties”.

7.2.3 The role of public opinion in sentencing

Roberts (2008: 15) posed two fundamental questions in relation to the courts and public opinion. The first question was about the extent in which the courts should consider public opinion when imposing a sentence and the second was whether community views are a legitimate general consideration during sentencing. According to Freiberg and Gelb (2008: 5), public attitudes towards the courts and the criminal justice system as institutions are crucial in ensuring the understanding of the shifts, particularly in sentencing power, between the legislature, the courts and the executive, with regard to sentencing and strict sentencing guidelines. There is a relationship between community views and the determination of sentence; hence, the courts are expected to impose sentences that are not radically inconsistent with public expectations.

Just like any other public institution, the courts have become increasingly concerned over the impact of public confidence in the very principles of justice (Schulz, 2010: 4). The study has proven that judges and magistrates consider public opinion. Over 77% of the respondents agreed that they are in touch with public opinion as opposed to 6.45% who are a little bit but not totally out of touch with public opinion. In order to achieve the desired outcome in sentencing practice, the general public must believe that they have an influence on judicial actions (Pitfield, 1997: 11). Roberts (2008: 15) states that “the era when courts impose sentence without any consideration of community views has long passed. We now live in a time in which the public

seeks accountability from all public services, including criminal justice. In the absence of a reliable measure of public attitudes, we have no way of knowing whether the citizens had more or less confidence in the courts than the contemporary public”.

7.2.4 Priority rating of sentencing

The courts play a key role in the criminal justice system. The courts have a wide range of sanctions that they can impose on the offender. However, one should note that the sanctions available to the courts are designed, at least partly, as punishment; however, it is natural to ask as to what extent they also serve to prevent crime. This section of the study indicated that there are different objectives when determining the offender’s sentence. They include punishing the offender, separating the offender from the community, expressing the community disapproval, assisting the offender with rehabilitation, deterring others from committing crime, deterring the offender from re-offending and compensating the victim or the community.

It has been proven in the study that judges and magistrates consider offenders’ rehabilitation as an important aim of sentencing. General deterrence is also considered an important factor in determining the sentence before individual deterrence. Surprisingly, punishing the offender was ranked third after offender rehabilitation and general deterrence. One would have expected that judges and magistrates rank punishing the offender as an important objective of sentencing. Incapacitation and compensating the victim are considered the least important objectives of sentencing.

7.2.5 Aggravating factors that affect sentencing

Factors that relate to the commission of the crime and that increase the seriousness of the offence are referred to as aggravating factors (Mays & Winfree, 2005: 82). The study ranked the aggravating factors in descending order from those considered most important to those considered least important. Crimes against a victim’s occupation (for example, police officials) increase the seriousness of the offence. The objective of the criminal justice system is to prevent, detect and punish crimes. Sometimes, police officials place themselves in vulnerable positions as

part of their jobs, and people who take advantage of that commit a worse offence. As Ashworth (2010: 166) puts it, “society needs people to undertake policing and other positions of authority, and a person who knowingly attacks such an official is striking against a fundamental institution in a way that one who attacks a private citizen is not. Because of its great social significance, it should be regarded as more serious”. The use of weapons as well as offences that involve multiple victims increase the seriousness of the offence (Champion, 2008: 9).

Offences that are premeditated are usually regarded as morally worse than those that occur on the spur of the moment (Walker & Padfield, 1996: 48). The study indicates that judges and magistrates are of the opinion that planned criminal activities increase the seriousness of the offence. Roberts (2008: 80) states that planned law-breaking betokens a considered attack on social values, with greater commitment and continuity than a spontaneous crime. Those who plan crimes are more culpable and fully committed and motivated in committing such crime than a person who acts on impulse. Committing a crime while a person is on bail, parole or suspended sentence also increases the seriousness of the offence. Walker and Padfield (1996: 44) state that abusing a position of trust has long been considered an aggravation and offending while on bail, parole or suspended sentence can be seen in that light. Although the offence committed during a period when the offender is on bail, parole or suspended sentence does not increase the harm caused by the offence or increase the culpability of the offender, the fact that the offender breached the trust placed on him or her by the court when releasing him or her on suspended sentence or bail is considered most important.

“If an offence is violent and the court is of the opinion that a custodial sentence longer than would be commensurate with the seriousness of the offence is needed for the protection of the public from serious harm from the offender, it may pass such a sentence, provided that it does not exceed the statutory maximum of the offence” (Walker and Padfield, 1996: 44). In addition, the use of unnecessary violence also increases the seriousness of the offence. If the victim of the offence is very young or old, the sentence is more likely to be severe. The same applies if the victim is disabled. The courts are required to treat as aggravated any offence in which the offender was wholly or partly motivated by the vulnerability of the victim (Ashworth, 2010:

162). If crime is committed against a vulnerable person, the courts believe that an offender took advantage of a relatively helpless person; therefore, the offender is more culpable.

Offences that involve the abuse of one's position of authority tend to be more severely sentenced. Whether the crime has been unplanned or does not constitute violence is not that important, the fact that there was abuse of authority is an element of crime. The study also uncovered that hatred driven offences are considered more serious by the courts. Such hatred may be based on the victim's race, religion, sexual orientation, amongst others. If an offence was racially or religiously aggravated it is the responsibility of the court to treat that fact as aggravating factor and must be stated in open court that the offence was so aggravated (Ashworth, 2010: 156). Increasing sentences on crimes based on hatred may be justified on the grounds of re-affirming and enhancing social values of tolerance and respect for variety of racial and religious groups and more especially as marking the humiliating effect on victims that such conduct often has. The study also indicates that offences that involve multiple offenders are also considered more serious. Ashworth (2010: 163) concludes that "when an offence is committed by two or more people, the justification of aggravating the sentence probably lies in the greater harm which it is believed to involve".

7.2.6 Mitigating factors affecting sentencing

Factors that are considered by the sentencing judge to reduce the severity of the crime are referred to as mitigating factors (Champion, 2008: 9). As with the aggravating factors, judges and magistrates were asked to indicate which mitigating factors they view as more important when sentencing. Previous convictions and the failure to respond to earlier sentences are good reasons for choosing a more severe sentence (Walker and Padfield, 1996: 44). However, if one has no prior convictions, it might lead to the reduction of his or her sentence. Hence, it is considered a mitigating factor. Previous convictions show how little respect the offender has for the law and that justifies sentencing the offender accordingly.

Assisting the police in obtaining evidence against other offenders or maybe obtaining stolen goods may lead to a reduction of sentence. As indicated, offences that are premeditated lead to a

more severe sentence but if the offence was not planned, it can lead to a lighter sentence. Being a young offender is also treated as a mitigating factor because somehow it is believed that young people have not had enough experiences to distinguish between what is wrong and what is right. Offenders who show remorse and those who were provoked by the victim also receive lighter sentences. Rehabilitation is also considered an important aspect when sentencing those offenders who show good rehabilitating prospects and those who are likely to re-offend receive a less severe sentence.

7.2.7 The relationship between continuous use of imprisonment and crime prevention

In many states, punishment has become more synonymous with imprisonment and there is a general belief that if a convicted person is not sentenced to imprisonment then that person has avoided punishment (Sherman & Hawkins, 1981: 76). Imprisonment is used for nine purposes (Walker and Padfield, 1996: 44):

- To hold people until such time they can be tried, sentenced or taken to a place to which they have been sentenced or until they can be extradited or deported if the need arises
- To coerce people into compliance with the orders of the court, for example, the non-payment of fines
- Imprisonment as a sentence serves to protect members of the society from offenders by taking them out of circulation
- Imprisonment as a sentence serves to hold offenders long enough in order to make possible a prolonged course of treatment
- Imprisonment as a sentence serves to act as an individual deterrent
- Imprisonment as a sentence serves to protect as a general deterrent
- Imprisonment as a sentence serves to symbolise degrees of disapproval of the offence
- Imprisonment as a sentence serves to inflict retributive punishment
- Imprisonment serves to protect a very unpopular offender from retaliation by the victim or supporters of the victim.

Based on the study, and from the above, it can be concluded that corrections pursues a mixture of goals which includes, amongst others, retribution, reform, incapacitation, deterrence and

rehabilitation. Because of the high costs associated with imprisonment and many other problems, the study revealed that not all criminal offences require imprisonment. Judges and magistrates may sentence offenders to fines, probation, community services and restitution to victims amongst others. Powell (2003: 109) states that the court shall not pass a custodial sentence on an offender unless it is of the opinion that: (i) an offence or the combination of offence and one or more offences associated with it was so serious that only imprisonment can be justified for the offence; or (ii) when the offence is violent or sexual in nature, that only imprisonment would be adequate to protect the public from serious harm from him or her. As proven in the study, the fact that the penalty of imprisonment is available as a sentencing option to the courts does not mean that it will always be necessary to impose it on convicted offenders. Apart from special cases, such as murder and rape, which carries a mandatory penalty of imprisonment, as proven in the study all imprisonable offences may instead be dealt with by any non-custodial sentences.

However, if sentences of imprisonment are to be justified, the justification of such sentence must also extend to keeping the offender in conditions that meet the required standards and not just deprive the liberty of the offender. The study has proven that imprisonment should be combined with offender rehabilitation. As Dunbar and Langdon (1998: 39) conclude, “if the ‘prison system’ is running properly, it should be projecting criminal justice values by operating fair and orderly institutions that provide purposeful regimes and are supportive of programs that require as many offenders as possible to address their behaviour. This is not only a right in itself but it also offers the best protection to the public”.

7.2.8 The relationship between the objectives of sentencing and crime prevention

There are four objectives of sentencing, i.e. retribution, deterrence, rehabilitation and incapacitation (see Chapter 2). Bing (1998: 168) wrote that “the four classic sentencing principles may be divided into two groups. In the first group are sentences reflecting retribution and deterrence. These sentences – imprisonment, fines and detention for young offenders – should reflect a tariff or be proportionate to the seriousness of the offence. In the second group are individualised sentences such as probation or hospital orders, which are not to be proportionate or are aimed at prevention (hospital) or rehabilitation (probation). The choice

between these two groups of sentence is the primary choice, although the first and most important aspect at making the choice is to consider the seriousness of the offence and therefore a tariff or proportionate sentence is likely to be considered before an individualised sentence”.

As indicated, the sentences available to the courts are designed, at least partly, as punishment, one should determine the extent in which they serve to prevent crime. The study attempted to answer the question by indicating that there are various ways in which sanctions may prevent crime which includes, amongst others, deterring potential offenders generally through fear of punishment, influencing those who have been appropriately sentenced not to offend again as well as incarcerating those who are particularly dangerous to the society. Sentencing practises in the courts, as proven in this study, are moving away from sanctions based on seriousness and moving towards sentences which will prevent re-offending. The study also revealed that the conscientious pursuit of crime prevention is a worthy objective of the criminal justice system as a whole.

The study has indicated that through the imposition of unpleasant punishment, potential criminals are deterred from committing crime because of the penalties they suffer if they get caught. In addition, it is also believed that punishment is aimed at uplifting society's values; hence, the society is dissatisfied whenever criminals receive lenient sentences that do not seem justified in view of the crime. It is up to the judges and magistrates to ensure that criminals are punished in a manner that equates with the seriousness of the crime (Mackenzie, 2005: 116).

In this study, it was proven that retribution is a proper goal of sentencing since it contributes to crime prevention. There seems to be a belief that retribution through the courts allows the victims equality with the offenders. However, even though there seems to be a slight retributive effect of punishment on crimes against freedom of movement, crimes against the state and the administration of justice as well as crimes against reputation, the retributive effect on violent crimes should be a worrying factor.

Rehabilitation as the aim of sentencing and as one of the factors that leads to crime prevention is supported by judges and magistrates hence they tend to agree that punishment should fit the offender's personality rather than the offence. Ashworth (2010: 56) notes that “like deterrence

and incapacitation, the rehabilitative rationale for sentencing seeks to justify compulsory measures as a means of achieving the prevention of crime, the distinctive method involving the rehabilitation of the offender”. Rehabilitation is aimed at reforming the offender of their criminal behaviour. Offenders are thus provided with education or skills, with the belief that they might be able to find occupations other than crime. However, from the study, judges and magistrates seem to be undecided as to whether punishment had a rehabilitative effect on all types of listed crimes or not, much like with retribution the rehabilitative effect of violent crimes remains dubious. Ross (2008: 123) wrote that rehabilitation, whether as part of institutional corrections or as an option under the community based part of corrections, is complicated and, in many respects, almost impossible. However, to ensure rehabilitation, the correctional system must closely evaluate each inmate and program them accordingly. Spohn (2002: 20) states that “if rehabilitation is the justification for punishment, the nature and the duration of the punishment will depend on what is needed to reform the offender”. Nevertheless, rehabilitation programmes that succeed tend to be more “well funded, well staffed and vigorously implemented” (Von Hirsch & Maher, 1998: 27).

The role of deterrence in sentencing has been accorded significant recognition in the courts. Deterrence is based on the notion that certain and severe punishment can discourage future criminal activities either by the offender or other potential offenders. As indicated in this study, deterrence can either be specific or general. While specific deterrence is what is done to offenders to prevent them from deciding to commit another offense, general deterrence is what is done to an offender to prevent others from deciding to engage in wrongful behaviour (Pollock, 2007: 395). Although there is a slight deterring effect of punishment on crimes such as those against public administration, the deterring effect of crimes against property, body integrity and against the person remains dubious.

It has herein been proven that the judges and magistrates are undecided as to what makes a larger contribution towards crime prevention: general deterrence or specific deterrence. For this reason, Ruby (1987: 9) wrote that the chief problem in dealing with deterrence as a matter of practice is to reconcile what is needed to deter the convict with what is needed to deter others. While quoting *Morrisette & Two Others (1970), 1 C.C.C (2d) 307*, he wrote “the problem is different

if the purpose of sentence is to deter the offender from repeating the offence from that if the purpose is to deter others who may be inclined to commit the same offence. In neither case does it necessarily follow that a long sentence is required to achieve the purpose. Deterrence should be considered from an objective view if the purpose is to deter others who may be inclined to commit the same offence. In such case, the gravity of the offence, the incidence of the crime in the community, the harm caused by it either to the individual or to the community and the public attitude towards it are some of the matters to be considered. If the purpose is to deter the offender from repeating the offence, then greater considerations must be given to the individual, his record and attitude, his motivation and his reformation and rehabilitation. If both purposes are to be achieved, then there must be weighing of all the factors and a sentence determined that gives a proper balance to them". In addition, judges and magistrates are of the opinion that there is a strong link between deterrence and publicity. Mackenzie (2005: 105) states that without dissemination of the details of the sentences imposed on offenders, it can hardly be argued that the sentence before the court is justifiable on the basis that it will deter others from offending. Penalties for offences should be widely known and be perceived to be a deterrent.

7.3 PROVEN HYPOTHESES

HYPOTHESES	STATUS
H ₀₁₁ : There is a relationship between the escalation rate of crimes and lenient sentencing	Proven
H ₀₁₂ : There is a relationship between the seriousness of the offence and sentencing	Proven
H ₀₁₃ : When sentencing, judges and magistrates consider public opinion	Proven
H ₀₁₄ : There is a relationship between imprisonment and crime prevention	Proven

H ₀₁₅ : Rehabilitation as an objective of sentencing has a relationship with crime prevention	Proven
H ₀₁₆ : Deterrence as an objective of sentencing has a relationship with crime prevention	Proven
H ₀₁₇ : Retribution as an objective of sentencing has a relationship with crime prevention	Proven

7.4 RECOMMENDATIONS

7.4.1 Deal with the backlog in courts

One of the major challenges facing the administration of effective justice in South Africa has been the persistent increase in the case backlogs. As indicated in Chapter 1, the Minister in the Planning Commission noted that there should be substantial changes to the present court process in criminal matters through practical, short – and medium – term proposals to improve the performance of the courts, especially regional courts. The contributory factors to court backlogs include:

- Capacity constraints which result from insufficient numbers of skilled detectives, court clerks, court managers, interpreters, prosecutors, legal aid representatives and presiding officers
- Poor investigations by the police
- Lack of capacity from the National Prosecution Authority
- Slow turnaround time in filling vacant magistrates' positions
- Overburden of the civil courts, family courts and high courts
- Inadequate co-ordination around case flow management.

Even though the vacancy rate is not that high, Table 6.1 indicates the backlog in the participating courts and how it impacts on their performance. In his Budget Speech for the financial year 2011/12, the Minister of Justice Mr Jeff Radebe stated that “a focus area for 2012 will be increased attention to increase the case finalisation rate at all court levels in conjunction with all role players”. In order to ensure the efficiency of the courts, the real reasons behind the ever-growing backlog of cases should be identified. Court statistics with particular references to the rate of incoming cases, the rate of finalised cases and the average time taken to conclude a case should be analysed. The Minister further stated that to keep in line with the government’s commitment to job creation, R450 million of the R13. 518 billion budget would be apportioned to fill up new positions at the courts.

7.4.2 Appropriate sentencing for violent crimes

Violence has become part of everyday life in our country. As the study has indicated, there are many disadvantages associated with the high rate of violence. The study indicates that sentencing for violent crimes remains lenient. It is the responsibility of the courts to impose sentences that will be appropriate in dealing with the level of violence in the country. The courts should promote a non-violent and law-abiding society and strengthen respect for justice and the law.

7.4.3 Value public opinion

This study has outlined the importance of public opinion not only in the courts but in the entire criminal justice system. It was proven that although they are not that out of touch with public opinion, judges and magistrates are still not very in touch with public opinion. All over the world, criminal justice systems are struggling with the same problems which include the high rate of crime; frustration with repeat offenders; overwhelmed police, courts and correctional systems; dissatisfaction with the over reliance on incarceration and, most importantly, eroding public confidence in the justice process. It is up to the criminal justice system to be more aggressive in engaging communities and more reflective about its impact in neighbourhoods. Nevertheless, in its operation, criminal justice is dependent upon public confidence.

However, there has been some difficulties regarding public opinion of punishment which includes that the general public, being poorly informed about crime and justice, overestimating the utility of punishment and the value of imprisonment and underestimating the value of an alternative response to crime (Indermaur & Hough, 2002: 36). Nevertheless, influencing public opinion on punishment requires, first and foremost, a good understanding of the nature of public opinion and particularly those forces that can influence that opinion.

7.4.4 Consistent application of aggravating and mitigating factors

As determined in the study, aggravating factors and mitigating factors relate to the harm or the potential harm of the offence and the culpability of the offender. Aggravating factors may be that the offender used more violence than necessary, the offence was committed by a group of offenders or the offence was hate driven, amongst others. Mitigating factors may be that the offence was not planned in advance, the offender is unlikely to re-offend or the offender has shown remorse, amongst others.

However, the question remains as to whether factors that are not directly linked to the criminal offence itself or to the offender's conduct in relation to the offence should be considered in sentencing. This includes factors such as: (i) offender's conduct after the offence (guilty pleas); (ii) offender's character which has no relation to the crime committed (previous good character); and (iii) indirect consequences of the offence on the offender (loss of employment). These factors are linked to the sentencing rationales. Making aggravating and mitigating factors consistent with the sentencing rationales will enhance the consistency of the approach. Hence, it is recommended that the extent to which the characteristics of the offenders, consequences of the offender's act and post-offence implications be considered as aggravating and mitigating factors. A link between aggravating and mitigating factors and the rationales for sentencing should exist. The extent to which mitigating and aggravating factors can be used and whether reasons should be required when they are used should be specific in formal sentencing guidelines in order to avoid disparities and other negative factors in sentencing.

7.4.5 Use of alternative means of sentencing

The study has proven that judges and magistrates mostly prefer imprisonment over other alternatives, hence, the correctional system in South Africa is overcrowded. Overcrowding leads to many problems that the correctional system is currently facing. In addition, the use of imprisonment for awaiting trial detainees has also led to severe overcrowding. Lengthy court appearances and conviction backlogs in courts lead to severe overcrowding.

Replacing custodial sentences with non-custodial sentences has its own advantages. Not only would it lead to a reduction of the population but it will increase the speed for further conviction amongst that group of offenders who are frequently in courts (Bottomley & Pease, 1986: 107). The use of non-custodial sentences is also beneficial to any particular group of short-term offenders.

7.5 RECOMMENDATIONS FOR FURTHER RESEARCH

In Chapter 1, the limitations of the study included the lack of sentencing statistics and a lack of funds in order to execute a more profound research. Bagaric (2001: 23) states that sentencing statistics play a meaningful role in any sentencing inquiry. Although caution needs to be exercised in using such data, sentencing statistics may provide an indication of the general sentencing standards. Magobotiti (2009) noted that sentencing statistics not only provide a glimpse into the empirical judicial sentencing approaches over the years, and currently, but also makes it possible to compare and contrast trends with respect to the disposition of the accused. If sentencing statistics are available one will be able to better understand the reasoning of different judicial officers in their approaches to sentencing. Hence, the study recommends that further research be conducted with the use of sentencing statistics. Furthermore, although it might seem costly, research on sentencing trends in the province is required in order to determine how such trends contribute to crime prevention.

7.6 SUMMARY

The study determined that punishment through sentencing has always been the primary goal to achieve when dealing with individuals who commit crime. It has always been imposed based on the idea that it will deter individuals from committing crime or repeating criminal acts. Rehabilitation, however, is regarded as a more permanent fix in deterring crime as it is based on creating a change in the criminal's attitude or resources so that crime is neither a desired nor necessary activity. Being able to identify potential criminal behaviour is vital for prevention and intervention. Four conclusions can thus be considered: a convicted criminal pays a debt to the society for his or her actions, punishment deters the offender including others from committing the same crime, imprisonment protects others from becoming his or her victim by keeping the criminal off the streets and rehabilitation makes it less likely that the criminal will repeat the crime.

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APPENDIX A

REQUEST TO ADMINISTER QUESTIONNAIRES

Phumudzo Muthaphuli
193B PHIRI PHIRI STREET
ZONE 4 MEADOWLANDS
1852
05 MAY 2011

The Sub-Regional Head

REQUEST TO ADMINISTER QUESTIONNAIRE

In order to develop a penological model for the interactions of the elements of punishment (retribution, deterrence and rehabilitation) I am conducting a scientific investigation entitled *Crime Prevention and sentencing: A practical Penological Perspective*. The investigation will help me obtain a Doctoral degree in the field of Penology at the University of South Africa (UNISA). The aims of the research include amongst others, to determine whether rehabilitation can be used as a crime prevention tool and to what extent; whether deterrence can be used as a crime prevention tool and to what extent; whether retribution can be used as a crime prevention tool and to what extent; whether there is any interaction between these elements of punishment and whether imprisonment should remain the mostly used form of punishment. In addition the research seeks to determine which of the elements of punishment contributes the most towards crime prevention. Not only does the research seeks to empirically determine the aims of sentencing but to also determine the extent in which other forms of punishment are being used by the courts.

The attached questionnaire forms an important part of the research hence I am requesting that it is distributed amongst the Judges and Magistrates within your region. I am requesting further information regarding the division of the courts in the Limpopo province especially your region so that I can be able to give more detail regarding the sample in the research.

Thank you for your co-operation

Phumudzo Muthaphuli

E-mail: muthap@unisa.ac.za

TEL: 084 046 1771/ 011 471 2105

Fax: 086 569 8789

APPENDIX B

LETTER TO THE HONOURABLE JUDGES AND MAGISTRATES

Phumudzo Muthaphuli
193B PHIRI PHIRI STREET
ZONE 4 MEADOWLANDS
1852
05 MAY 2011

Honourable Judges/ Magistrates

Re: Completion of questionnaire on Crime prevention: A practical Penological perspective

I am conducting a scientific investigation entitled *Crime Prevention and sentencing: A practical Penological Perspective*. The investigation will help me obtain a Doctoral degree in the field of Penology at the University of South Africa (UNISA). The aims of the research include amongst others, to determine whether rehabilitation can be used as a crime prevention tool and to what extent; whether deterrence can be used as a crime prevention tool and to what extent; whether retribution can be used as a crime prevention tool and to what extent; whether there is any interaction between these elements of punishment and whether imprisonment should remain the mostly used form of punishment. In addition the research seeks to determine which of the elements of punishment contributes the most towards crime prevention. Not only does the research seeks to empirically determine the aims of sentencing but to also determine the extent in which other forms of punishment are being used by the courts.

The attached questionnaire forms an important part of the research hence I am requesting that it is completed with the permission of the Regional Court President. There are 4 sections in the questionnaire that should be completed accurately. The questionnaire was simplified so that its completion should not take more than 30 minutes and If there is something you do not understand feel free to contact me anytime. Please note that you do not need to provide your name or sign the questionnaire. Your identity will be treated as confidential and the answers will only be used for scientific purpose.

Thank you for your help

Phumudzo Muthaphuli

E-mail: muthap@unisa.ac.za

TEL: 084 046 1771/ 011 471 2105

Fax: 086 569 8789

APPENDIX C

THE QUESTIONNAIRE

QUESTIONNAIRE ABOUT CRIME PREVENTION AND SENTENCING: A PRACTICAL PENOLOGICAL PERSPECTIVE

INSTRUCTIONS:

- Section A: Biographical data
 Section B: Views on the sentencing process
 Section C: Views on the continuous use of imprisonment
 Section D: Views on the objectives of sentencing and crime prevention

SECTION A: BIOGRAPHICAL DATA

Serial no

3		

1. Your age:

1	2	3	4	5	6
<20	20 - 29	30 - 39	40 - 49	50 - 59	60+

FOR OFFICIAL USE

4

2. Gender:

1. Male	2. Female

5

3. Occupation:

1. Judge	2. Magistrate

6

4. Number of years as a judicial officer:

1	2	3	4	5	6
Less than a year	1 to 3 years	4 to 7 years	8 to 11 years	12 to 16 years	More than 16 years

7

5. Please indicate your race.

1. Black	
2. Coloured	
3. Indian	
4. White	
5. Other	

8

6. How many cases do you deal with per day?

1. 1 to 3	2. 4 to 7	3. 8 to 11	4. 12 to 16	5. More than 16

9

<p>7. Given your kind of job, how safe do you feel in your area where you reside?</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="width: 60%;">1. Very safe</td><td style="width: 40%;"></td></tr> <tr><td>2. Fairly safe</td><td></td></tr> <tr><td>3. A bit unsafe</td><td></td></tr> <tr><td>4. Very unsafe</td><td></td></tr> </table> <div style="text-align: right; margin-top: 10px;"> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="margin-left: 5px;">10</div> </div>	1. Very safe		2. Fairly safe		3. A bit unsafe		4. Very unsafe																																										
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SECTION B: VIEWS ON THE SENTENCING PROCESS																																																	
<p>8. Do you think that recorded crime for the past 5 years in your area has:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="width: 60%;">1. Increased a lot</td><td style="width: 40%;"></td></tr> <tr><td>2. Increased a little</td><td></td></tr> <tr><td>3. Stayed the same</td><td></td></tr> <tr><td>4. Decreased a little</td><td></td></tr> <tr><td>5. Decreased a lot</td><td></td></tr> </table>	1. Increased a lot		2. Increased a little		3. Stayed the same		4. Decreased a little		5. Decreased a lot		<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="margin-left: 5px;">11</div>																																						
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<p>9. In the last 5 years do you think that the following crimes have become more common, stayed about the same or become less common (See page 9 for offence code list):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">OFFENCE TYPE</th> <th style="width: 10%;">1. More common</th> <th style="width: 10%;">2. Stayed the same</th> <th style="width: 10%;">3. Less common</th> <th style="width: 10%;">4. Not sure</th> </tr> </thead> <tbody> <tr><td>Crime against the state and administration of justice</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against reputation</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against freedom of movement</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against property and damage</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against bodily integrity</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against the person</td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against public administration</td><td></td><td></td><td></td><td></td></tr> </tbody> </table>	OFFENCE TYPE	1. More common	2. Stayed the same	3. Less common	4. Not sure	Crime against the state and administration of justice					Crimes against reputation					Crimes against freedom of movement					Crimes against property and damage					Crimes against bodily integrity					Crimes against the person					Crimes against public administration					<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="margin-left: 5px;">18</div>								
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<p>10. How would you rate the current sentences for the following types of crime on a scale from 1 are much too tough, a little too tough, about right, a little too lenient or much lenient? (See page 9 for offence code list):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">OFFENCE TYPE</th> <th style="width: 10%;">1. Much too tough</th> <th style="width: 10%;">2. A little too tough</th> <th style="width: 10%;">3. Approp riate</th> <th style="width: 10%;">4. A little too lenient</th> <th style="width: 10%;">5. Much too lenient</th> </tr> </thead> <tbody> <tr><td>Crime against the state and administration of justice</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against reputation</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against freedom of movement</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against property and damage</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against bodily integrity</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against the person</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crimes against public administration</td><td></td><td></td><td></td><td></td><td></td></tr> </tbody> </table>	OFFENCE TYPE	1. Much too tough	2. A little too tough	3. Approp riate	4. A little too lenient	5. Much too lenient	Crime against the state and administration of justice						Crimes against reputation						Crimes against freedom of movement						Crimes against property and damage						Crimes against bodily integrity						Crimes against the person						Crimes against public administration						<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="margin-left: 5px;">25</div>
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<p>11. How in touch are the Judges with the public opinion?</p> <table border="1"> <tr> <td>1. Very in touch</td> <td></td> </tr> <tr> <td>2. Reasonably in touch</td> <td></td> </tr> <tr> <td>3. Somewhat out of touch</td> <td></td> </tr> <tr> <td>4. Very out of touch</td> <td></td> </tr> </table>					1. Very in touch		2. Reasonably in touch		3. Somewhat out of touch		4. Very out of touch		<div></div> <p>26</p>																																										
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<p>12. Sentences can reflect a variety of objectives or justifications. The following is a list of seven commonly recognized sentencing objectives. Please rank them from 1 to 7 according to your view of the purpose of sentencing (1 = the most important...7 = the least important).</p> <table border="1"> <tr> <td>1. Punishing the offender</td> <td></td> </tr> <tr> <td>2. Separating the offender from the society</td> <td></td> </tr> <tr> <td>3. Expressing community disapproval</td> <td></td> </tr> <tr> <td>4. Assisting the offender's rehabilitation</td> <td></td> </tr> <tr> <td>5. Deterring others from committing similar crimes</td> <td></td> </tr> <tr> <td>6. Deterring the offender from re-offending</td> <td></td> </tr> <tr> <td>7. Compensating the victim(s) or the community</td> <td></td> </tr> </table>					1. Punishing the offender		2. Separating the offender from the society		3. Expressing community disapproval		4. Assisting the offender's rehabilitation		5. Deterring others from committing similar crimes		6. Deterring the offender from re-offending		7. Compensating the victim(s) or the community		<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <p>33</p>																																				
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<p>13. In determining a sentence, a judge is required to consider a number of factors. This question lists commonly recognized aggravating and mitigating factors. Please go through the lists and indicate your own views on the importance of these factors in the case you tried. Many of the factors may not have arisen in the case, if so indicate this in the 'did not rise' box. Please respond to each item.</p> <p>13.1 Aggravating factors. These are matters that increase the culpability of the offender, and therefore usually have effect of increasing the severity of the sentence.</p> <table border="1"> <thead> <tr> <th>AGGRAVATING FACTORS</th> <th>1. Very important</th> <th>2. Quite important</th> <th>3. Not that important</th> <th>4. Not important at all</th> </tr> </thead> <tbody> <tr> <td>The offence involved the use of actual or threatened violence</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offence involved use of weapons</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offence involved more than needed violence</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offence was motivated by hatred</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offence was committed without regard for public safety</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The victim was regarded as vulnerable because very old, very young or disabled</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offender abused a position of trust or authority in relation to the victim</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The victim was a police officer or a person exercising other public or community functions and the offence arose because of the victim's occupation</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>The offence(s) involved multiple victims or a series of criminal acts</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>					AGGRAVATING FACTORS	1. Very important	2. Quite important	3. Not that important	4. Not important at all	The offence involved the use of actual or threatened violence					The offence involved use of weapons					The offence involved more than needed violence					The offence was motivated by hatred					The offence was committed without regard for public safety					The victim was regarded as vulnerable because very old, very young or disabled					The offender abused a position of trust or authority in relation to the victim					The victim was a police officer or a person exercising other public or community functions and the offence arose because of the victim's occupation					The offence(s) involved multiple victims or a series of criminal acts					<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
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The offence was committed in co-operation with other offenders					
The injury, emotional harm, loss or damage caused by the offence was substantial					
The offence was part of a planned or an organized criminal activity					
The offender had prior convictions					
The offender was on parole, subject to a suspended sentence, or on bail					
Are there any other factors that you consider aggravating to the seriousness of the offence(s), please specify					

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13.2 Mitigating factors. These are generally matters that decrease culpability of the offender with the effect of reducing severity of the sentence.

MITIGATING FACTORS	1. Very important	2. Quite important	3. Not that important	4. Not important at all
The injury or loss to the victim was not substantial				
The offence was not part of a planned or organized criminal activity				
The offender was provoked by the victim				
The offender does not have any record(or any significant) of prior convictions				
The offender is a person of a good character				
The offender was young (under 18) or old (over 65)				
The offender is unlikely to re-offend				
The offender has good prospects of rehabilitation either because of age or otherwise				
The offender has shown remorse for the offence by making reparation for any injury, loss or damage or any other manner				
The offender was not fully aware of the consequences of his or her actions because of the offender's age, mental disorder or other disability				
The offender provided assistance to the law enforcement authority				
Are there any other factors that you consider mitigating to the seriousness of the offence, please specify.....				

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SECTION C: VIEWS ON THE CONTINUOUS USE OF IMPRISONMENT

With regard to the continuous use of imprisonment, please indicate the extent to which you agree or disagree with the following statements.

Agreement legend

1 : Strongly agree (SA)

2 : Agree (A)

3: Undecided (U)

4: Disagree (D)

5: Strongly disagree (SD)

	1. SA	2. A	3. U	4. D	5. SD
14. Inmate reform is a legitimate penal objective.					
15. Rehabilitation as a penal objective outlived its usefulness.					
16. Determinate sentences are more conducive to inmate reform.					
17. It is difficult to determine offender's suitability for reform.					
18. Recidivism can be used as a measure of the effectiveness of the penal system.					
19. Punishment is imprisonment's most primary objective as it seeks to inflict pain on the offender					
20. Imprisonment contributes a lot to crime prevention.					
21. The costs of imprisonment are way too high compared to other options.					
22. Any criminal activity requires imprisonment.					
23. Offenders can reform without having to be sentenced to imprisonment.					
24. Imprisonment produces hardened criminals.					
25. Imprisonment is the best way to deal with offenders as they undergo programmes that will help them to reintegrate successfully in the community.					

SECTION D: VIEWS ON THE OBJECTIVES OF SENTENCING AND CRIME PREVENTION

With regard to the continuous use of imprisonment, please indicate the extent to which you agree or disagree with the following statements.

Agreement legend

- 1 : Strongly agree (SA)
- 2 : Agree (A)
- 3: Undecided (U)
- 4: Disagree (D)
- 5: Strongly disagree (SD)

	1. SA	2. A	3. U	4. D	5. SD
26. Punishment should be unpleasant to the person undergoing it.					
27. Punishment must be perceived as a manifestation of the society's value system					
28. For punishment to be administered to the offender, the offender must be accountable, answerable and culpable.					
29. The fear of punishment serves to intimidate or deter most people from committing crime.					
30. Punishment should fit the offender's personality rather than the crime itself.					
31. The high rate of recidivism points to the failure of incarceration as punishment to deter criminals.					
32. Sentencing is a public statement of the individual offender's blameworthiness.					
33. Sentencing objective is the crime control strategy most favoured by judges.					
34. Sentencing goal preferences by judges are strongly related to sentencing.					
35. Judges favouring more punitive objectives base their judgement on the offence and criminal record.					
36. Judges favouring more punitive objectives base their judgement on the culpability for the offence					
37. Retribution is not concerned with the rights of the offender.					
38. In retribution, the reaction of the society towards the offender is based exclusively on a concern for the victim and the community.					
39. Retribution is a proper objective of sentencing.					

40. Retribution is a prominent objective of sentencing.							
41. Retribution addresses society's desire for what society regards as deserved punishment for the offender.							
42. Retribution through the courts officially conveys society's condemnation of the offender's conduct							
43. Retribution allows the victim equality with the criminal.							
44. Retribution gives the victim the right to do the criminal what the criminal has done to the victim.							
45. Retribution strives towards crime prevention rather than rehabilitation of the offender							
46. deterrence strives towards crime prevention rather than the rehabilitation of the offender							
47. The significance of the role of deterrence in sentencing has been recognized by the courts.							
48. General deterrence contributes more to crime prevention than individual deterrence.							
49. The public expresses disappointment when they perceive the sentence to be too lenient in the light of the perceived seriousness of the crime.							
50. It is essential that greater publicity be given to deterring and retributinal penal measures as imposed by the courts.							
51. Judges always use reformation as motivational objective when passing sentences.							
52. Judges focus on punishment, regardless the type of disposition imposed.							
53. Incarceration and fines are imposed more often than probation.							
54. According to your experience, please indicate to what degree punishment imposed for the following types of crimes on the offender has a deterrent effect (See page 9 for offence code list):							
OFFENCE TYPE	1. No deterrent effect whatsoever	2. Deterring effect is dubious	3. A slight deterring effect	4. reasonabl y deterring effect	5. Totally deterring effect		
1. Crime against the state and administration of justice							
2. Crimes against reputation							
3. Crimes against freedom of movement							
4. Crimes against property and damage							
5. Crimes against bodily integrity							
6. Crimes against the person							
7. Crimes against public administration							

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55. According to your experience, please indicate to what degree punishment imposed for the following types of crimes on the offender has a rehabilitative effect (See page 9 for offence code list):

OFFENCE TYPE	1. No rehabilitative effect whatsoever	2. Rehabilitat ive effect is dubious	3. A slight rehabilit ative effect	4. reasonabl y rehabilitati ve effect	5. Totally Rehabilitative effect
1. Crime against the state and administration of justice					
2. Crimes against reputation					
3. Crimes against freedom of movement					
4. Crimes against property and damage					
5. Crimes against bodily integrity					
6. Crimes against the person					
7. Crimes against public administration					

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56. According to your experience, please indicate to what degree punishment imposed for the following types of crimes on the offender has a retributive effect (See page 9 for offence code list):

OFFENCE TYPE	1. No retributive effect whatsoever	2. Retributive effect is dubious	3. A slight retributiv e effect	4. reasonabl y retributive effect	5. Totally Retributive effect
1. Crime against the state and administration of justice					
2. Crimes against reputation					
3. Crimes against freedom of movement					
4. Crimes against property and damage					
5. Crimes against bodily integrity					
6. Crimes against the person					
7. Crimes against public administration					

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CODE	OFFENCE AND TYPE
A	Crimes against the state and administration of justice
A1	Public violence
A2	Possession of firearms and ammunition by unauthorized persons
A3	Escaping from custody and assisting in escaping
A4	Terrorism
A5	Negligent/ reckless driving
A6	Sabotage
A7	Contempt of court
A8	Defeating or obstructing the course of justice
A9	Perjury
B	Crimes against reputation
B1	Crimen injuria
B2	Criminal defamation
C	Crimes against freedom of movement
C1	Abduction
C2	Kidnapping
C3	Child stealing
D	Crimes against property and damage
D1	Housebreaking with intention to steal and theft
D2	Robbery with aggravating circumstances
D3	Robbery
D4	Theft
D5	Theft of livestock
D6	Theft of motor vehicle including motor cycle
D7	Fraud
D8	Arson
D9	Intentional damage property
E	Crimes against bodily integrity (violent)
E1	Indecent assault
E2	Incest
E3	Rape
E4	Attempted rape
E5	Common assault
E6	Assault with grievous body harm
F	Crimes against the person (violent)
F1	Culpable homicide
F2	Murder
F3	Attempted murder
G	Crimes against public administration
G1	Bribery
G2	Corruption
G3	Road traffic offence
G4	Drugs and dependence-producing substance

APPENDIX D

LIMPOPO MAGISTRATE COURTS' PERFORMANCE

BENCH MARKING PIETERSBURG SUBCLUSTER JUDICIAL AND QUASI JUDICIAL P

LIMPOPO REGION	PIETERSBURG SUB-REGION	No. of Magistrates	Criminal Court hours	Civil court hours	Quasi-judicial hours	Actual hours	Normal hours per month
SESHEGO	Seshego	6	194:30	36:20	300:35	531:25	900:00
	Pietersburg	9	164:00	124:10	125:57	414:07	700:00
	Potgietersrus	4	153:30	17:20	68:40	239:30	376:00
	Mokerong	6	195:00	17:00	124:00	336:00	600:00
	Bochum	3	103:45	19:00	99:15	222:00	300:00
	Mankweng	4	204:30	27:25	195:25	427:20	500:00
THABAMO OPO	Thabamooopo	6	265:00	85:00	245:00	595:00	700:00
	Praktiseer	4	257:00	22:00	213:00	492:00	400:00
	Sekhukhune	3	57:00	9:00	114:00	180:00	400:00
	Nebo	5	137:00	2:00	219:00	358:00	400:00
NYLSTROOM	Nylstroom	4	141:10	9:50	159:30	310:30	400:00
	Warmbad	3	123:15	14:15	90:00	227:30	300:00
	Naboomspruit	1	42:55	2:20	14:45	60:00	100:00
	Thabazimbi	2	98:30	4:30	38:00	141:00	200:00
	Ellisras	2	58:45	31:00	70:05	159:50	200:00
	Phalala	1	42:15	5:30	43:35	91:20	100:00
MALAMULELE	Bolobedu	3	118:25	14:00	138:30	270:55	300:00
	Giyani	4	169:55	6:50	156:30	333:15	400:00
	Malamulele	4	178:05	6:00	211:00	395:05	400:00
	Sekgosese	3	127:25	3:00	68:10	198:35	300:00
	Tshitale	2	57:10	2:00	50:25	109:35	200:00
	Vuwani	3	161:20	7:35	177:40	346:35	300:00
THOHOYANDOU	Thohoyandou	9	287:30	57:15	265:40	610:25	900:00
	Louis Trichardt	3	118:15	34:45	71:45	224:45	300:00
	Musina	2	104:00	10:00	101:00	215:00	200:00
	Tshilwavhusiku	2	68:15	6:00	74:45	185:00	200:00
	Dzanani	4	141:40	21:45	291:30	454:55	400:00
	Waterval	2	90:10	51:00	161:00	302:10	200:00
	Mutale	2	143:00	4:00	57:00	204:00	200:00
	Tiyani	1	61:45	0:15	84:00	146:00	100:00
RITAVI	Ritavi	4	236:00	26:05	196:45	501:55	400:00
	Tzaneen	3	108:55	36:45	107:45	253:25	300:00
	Namakgale	2	79:25	12:25	153:35	245:25	200:00
	Lulekani	2	70:55	3:10	109:05	183:10	200:00
	Naphuno	4	136:25	6:45	178:45	321:55	400:00
	Phalaborwa	2	152:40	48:00	123:00	403:56	200:00
Total		124				0:00	12676:00

Signature

ERIOD ENDING: DECEMBER 2010

Hours lost per month	% Total Occupation	No. of Magistrates required	No. of criminal cases outstanding	Period outstanding (in weeks)	Average per court	Civil cases enrolled outstanding	Period Outstanding (in weeks)
368:35	59%	7	446	4 M	148	120	4 M
285:53	59%	4	3450	0	862	28	0
136:30	64%	2	275	15 W	91	41	10 W
264:00	56%	3	483	12 W	161	17	6 W
78:00	74%	4	110	7 W	55	9	8 W
72:40	85%	4	200	3 M	77	38	1 M
105:00	85%	6	0	0	0	0	0
#####	123%	3	448	6 M	224	23	1 M
220:00	45%	1	203	3 M	100	5	3 M
42:00	90%	4	268	3 M	134	0	0
89:30	78%	4	125	12 W	63	15	2 M
72:30	76%	3	272	2 M	141	16	2 M
40:00	60%	1	77	9 W	77	2	7 W
59:00	71%	2	205	6 W	125	38	5 M
40:10	80%	3	92	16 W	92	17	4 W
8:40	91%	1	140	9 W	140	2	3 M
29:05	90%	3	94	4 W	47	8	8 W
66:45	83%	3	102	6 W	34	17	8 W
4:55	99%	5	61	4 W	30	2	4 W
101:25	66%	2	319	6 W	159	0	0
90:25	55%	1	79	4 W	79	8	4 W
#####	116%	4	62	5 W	31	6	6 W
289:35	68%	6	759	6 W	151	7	52 W
75:15	75%	3	213	4 W	106	28	8 W
60:00	108%	2	219	12 W	110	34	10 W
15:00	93%	2	50	5 W	50	0	0 W
2:05	114%	5	205	6 W	103	1	4 W
297:00	151%	3	193	6 W	97	0	0 W
#####	102%	2	104	3 W	52	3	2 W
38:30	146%	1	77	6 W	77	0	0 W
#####	125%	5	220	8 W	73	15	12 W
46:35	84%	3	349	7 W	174	98	20 W
#####	123%	2	122	8 W	122	10	8 W
16:50	92%	1	109	30 W	109	6	16 W
78:05	80%	3	349	4 W	174	4	6 W
#####	202%	4	284	26 W	284	65	28 W
1205:38		112					

DATE:
